Appendix A

1. Internal Revenue Code, Section 42 – Low-Income Housing Credit
2. Federal Register Vol. 65, No 10 – Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit.
3. Internal Revenue Notice 88-80 – Income Determination
4. Internal Revenue Ruling 91-38 – Low-Income Housing Credit Questions and Answers
5. Federal Register Vol. 62 No. 187 – Available Unit Rule
6. Internal Revenue Ruling 92-61 – Treatment of resident Manager's Unit
7. Revenue Procedure 94-65 – Documentation of Income and Assets
8. Internal Revenue Procedure 2005-37 – Safe Harbor
9. Internal Revenue Procedure 94-64 – Waiver of Annual Income Recertification

Sec. 42. Low-income housing credit

STATUTE

(a) In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to -

(1) the applicable percentage of
(2) the qualified basis of each qualified low-income building.

(b) Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

For purposes of this section -

(b)(1) Building placed in service during 1987

In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term 'applicable percentage' means -

(A) 9 percent for new buildings which are not federally subsidized for the taxable year, or
(B) 4 percent for -
(i) new buildings which are federally subsidized for the taxable year, and
(ii) existing buildings.

(b)(2) Buildings placed in service after 1987

(b)(2)(A) In general

In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term 'applicable percentage' means the appropriate percentage prescribed by the Secretary for the earlier of -

(i) the month in which such building is placed in service, or
(ii) at the election of the taxpayer -
(I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the

taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or
(II) in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued.

A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(b)(2)(B) Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to -

(i) 70 percent of the qualified basis of a building described in paragraph (1)(A), and
(ii) 30 percent of the qualified basis of a building described in paragraph (1)(B).

(b)(2)(C) Method of discounting

The present value under subparagraph (B) shall be determined -

(i) as of the last day of the 1st year of the 10-year period referred to in subparagraph (B),
(ii) by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and
(iii) by assuming that the credit allowable under this section for any year is received on the last day of such year.

(b)(3) Cross references

(A) For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).
(B) For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).
(C) For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c) Qualified basis; qualified low-income building

For purposes of this section -

(c)(1) Qualified basis

(c)(1)(A) Determination

The qualified basis of any qualified low-income building for any taxable year is an amount equal to -

(i) the applicable fraction (determined as of the close of such taxable year) of
(ii) the eligible basis of such building (determined under subsection (d)(5)).

(c)(1)(B) Applicable fraction

For purposes of subparagraph (A), the term 'applicable fraction' means the smaller of the unit fraction or the floor space fraction.

(c)(1)(C) Unit fraction

For purposes of subparagraph (B), the term 'unit fraction' means the fraction -

(i) the numerator of which is the number of low-income units in the building, and
(ii) the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(c)(1)(D) Floor space fraction

For purposes of subparagraph (B), the term 'floor space fraction' means the fraction -

(i) the numerator of which is the total floor space of the low-income units in such building, and
(ii) the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(c)(1)(E) Qualified basis to include portion of building used to provide supportive services for homeless

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of -

(i) so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or
(ii) 20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(c)(2) Qualified low-income building

The term 'qualified low-income building' means any building -

(A) which is part of a qualified low-income housing project at all times during the period -
(i) beginning on the 1st day in the compliance period on which such building is part of such a project, and
(ii) ending on the last day of the compliance period with respect to such building, and
(B) to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply.

Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) (FOOTNOTE 1) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence)).

(FOOTNOTE 1) See References in Text note below. (d) Eligible basis

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For purposes of this section -
(1) New buildings
  The eligible basis of a new building is its adjusted basis as
of the close of the 1st taxable year of the credit period.
(2) Existing buildings
  (A) In general
    The eligible basis of an existing building is -
      (i) in the case of a building which meets the requirements
    of subparagraph (B), its adjusted basis as of the close of
    the 1st taxable year of the credit period, and
      (ii) zero in any other case.
  (B) Requirements
    A building meets the requirements of this subparagraph if -
      (i) the building is acquired by purchase (as defined in
    section 179(d)(2)),
      (ii) there is a period of at least 10 years between the
    date of its acquisition by the taxpayer and the later of -
        (I) the date the building was last placed in service, or
        (II) the date of the most recent nonqualified substantial
      improvement of the building,
      (iii) the building was not previously placed in service by
    the taxpayer or by any person who was a related person with
    respect to the taxpayer as of the time previously placed in
    service, and
      (iv) except as provided in subsection (f)(5), a credit is
    allowable under subsection (a) by reason of subsection (e)
    with respect to the building.
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(c)(2)(C) Adjusted basis

For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(c)(2)(D) Special rules for subparagraph (B)

(c)(2)(D)(i) Nonqualified substantial improvement

For purposes of subparagraph (B)(ii) -

(c)(2)(D)(i)(I) In general

The term 'nonqualified substantial improvement' means any substantial improvement if section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.

(c)(2)(D)(i)(II) Date of substantial improvement

The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).

(c)(2)(D)(i)(III) Substantial improvement

The term 'substantial improvement' means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.

(c)(2)(D)(ii) Special rules for certain transfers

For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service -

> (I) in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,
> (II) by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),
> (III) by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,
> (IV) by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V) of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(c)(2)(D)(iii) Related person, etc.

(c)(2)(D)(iii)(I) Application of section 179

For purposes of subparagraph (B)(i), section 179(d) shall be applied by substituting '10 percent' for '50 percent' in section (FOOTNOTE 2) 267(b) and 707(b) and in section 179(b)(7).

(FOOTNOTE 2) So in original. Probably should be 'sections'.

(c)(2)(D)(iii)(II) Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the 'related person') is related to any person if the related person bears a relationship to such person specified in section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.

(c)(3) Eligible basis reduced where disproportionate standards for units

(c)(3)(A) In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(c)(3)(B) Exception where taxpayer elects to exclude excess costs

(c)(3)(B)(i) In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if -

(I) the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and
(II) the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(c)(3)(B)(ii) Excess

The excess described in this clause with respect to any unit is the excess of -

(I) the cost of such unit, over
(II) the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit.

The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(c)(4) Special rules relating to determination of adjusted basis

For purposes of this subsection -

(c)(4)(A) In general

Except as provided in subparagraph (B), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(c)(4)(B) Basis of property in common areas, etc., included

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(c)(4)(C) No reduction for depreciation

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

(c)(5) Special rules for determining eligible basis

(c)(5)(A) Eligible basis reduced by Federal grants

If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.

(c)(5)(B) Eligible basis not to include expenditures where section 167(k) elected

The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k)

(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(c)(5)(C) Increase in credit for buildings in high cost areas

(c)(5)(C)(i) In general

In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph -

> (I) in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and
> (II) in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(c)(5)(C)(ii) Qualified census tract

(c)(5)(C)(ii)(I) In general

The term 'qualified census tract' means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(c)(5)(C)(ii)(II) Limit on MSA's designated

The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(c)(5)(C)(ii)(III) Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(c)(5)(C)(iii) Difficult development areas

(c)(5)(C)(iii)(I) In general

The term 'difficult development areas' means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(c)(5)(C)(iii)(II) Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(c)(5)(C)(iv) Special rules and definitions

For purposes of this subparagraph -

(I) population shall be determined on the basis of the most recent decennial census for which data are available,
(II) area median gross income shall be determined in accordance with subsection (g)(4),
(III) the term 'metropolitan statistical area' has the same meaning as when used in section 143(k)(2)(B), and
(IV) the term 'nonmetropolitan area' means any county (or portion thereof) which is not within a metropolitan statistical area.

(c)(6) Credit allowable for certain federally-assisted buildings acquired during 10-year period described in paragraph

(2)(B)(ii)

(c)(6)(A) In general

On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary -

(i) to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration, or
(ii) to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured.

The preceding sentence shall not apply to any building described in paragraph (7)(B).

(c)(6)(B) Federally-assisted building

For purposes of subparagraph (A), the term 'federally-assisted building' means any building which is substantially assisted, financed, or operated under -

(i) section 8 of the United States Housing Act of 1937,
(ii) section 221(d)(3) or 236 of the National Housing Act, or
(iii) section 515 of the Housing Act of 1949,

as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

(c)(6)(C) Low-income buildings where mortgage may be prepaid

A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if -

> (i) the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,
> (ii) the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and
> (iii) the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

(c)(6)(D) Buildings acquired from insured depository institutions in default

A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(c)(6)(E) Appropriate Federal official

For purposes of subparagraph (A), the term 'appropriate Federal official' means -

> (i) the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and
> (ii) the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.

(c)(7) Acquisition of building before end of prior compliance period

(c)(7)(A) In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer -

> (i) paragraph (2)(B) shall not apply, but
> (ii) the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have

been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(c)(7)(B) Description of building

A building is described in this subparagraph if -

(i) a credit was allowed by reason of subsection (a) to any prior owner of such building, and
(ii) the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

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(e) Rehabilitation expenditures treated as separate new building
  (1) In general
    Rehabilitation expenditures paid or incurred by the taxpayer
  with respect to any building shall be treated for purposes of
  this section as a separate new building.
  (2) Rehabilitation expenditures
    For purposes of paragraph (1) -
    (A) In general
      The term 'rehabilitation expenditures' means amounts
    chargeable to capital account and incurred for property (or
    additions or improvements to property) of a character subject
    to the allowance for depreciation in connection with the
    rehabilitation of a building.
    (B) Cost of acquisition, etc, (FOOTNOTE 3) not included
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(FOOTNOTE 3) So in original. Probably should be 'etc.,'.

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      Such term does not include the cost of acquiring any building
    (or interest therein) or any amount not permitted to be taken
    into account under paragraph (3) or (4) of subsection (d).
  (3) Minimum expenditures to qualify
    (A) In general
      Paragraph (1) shall apply to rehabilitation expenditures with
    respect to any building only if -
        (i) the expenditures are allocable to 1 or more low-income
      units or substantially benefit such units, and
        (ii) the amount of such expenditures during any 24-month
      period meets the requirements of whichever of the following
      subclauses requires the greater amount of such expenditures:
          (I) The requirement of this subclause is met if such
        amount is not less than 10 percent of the adjusted basis of
        the building (determined as of the 1st day of such period
        and without regard to paragraphs (2) and (3) of section
        1016(a)).
          (II) The requirement of this subclause is met if the
        qualified basis attributable to such amount, when divided
        by the number of low-income units in the building, is
        $3,000 or more.
    (B) Exception from 10 percent rehabilitation
      In the case of a building acquired by the taxpayer from a
    governmental unit, at the election of the taxpayer,
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subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C) Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(4) Special rules

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection -

(A) such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B) the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred.

Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5) No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6) Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f) Definition and special rules relating to credit period

(1) Credit period defined

For purposes of this section, the term 'credit period' means, with respect to any building, the period of 10 taxable years beginning with -

(A) the taxable year in which the building is placed in service, or

(B) at the election of the taxpayer, the succeeding taxable year,

but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2) Special rule for 1st year of credit period

(A) In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction -

(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii) the denominator of which is 12.

(B) Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st

taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3) Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A) In general

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if -

(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B) 1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4) Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5) Credit period for existing buildings not to begin before rehabilitation credit allowed

(A) In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B) Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i) In general

In the case of a building described in clause (ii) -

(I) subsection (d)(2)(B)(iv) shall not apply, and

(II) the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii) Building described

A building is described in this clause if -

(I) a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II) a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if subsection (e)(3)(A)(ii)(II) were applied by substituting '$2,000' for '$3,000'.

(g) Qualified low-income housing project

For purposes of this section -

(1) In general

The term 'qualified low-income housing project' means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A) 20-50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B) 40-60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2) Rent-restricted units

(A) In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B) Gross rent

For purposes of subparagraph (A), gross rent -

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

For purposes of clause (iii), the term 'supportive service' means any service provided under a planned program of services designed to enable residents of a residential rental property

to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C) Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i) In the case of a unit which does not have a separate bedroom, 1 individual.

(ii) In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D) Treatment of units occupied by individuals whose incomes rise above limit

(i) In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii) Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit

If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.

(E) Units where Federal rental assistance is reduced as tenant's income increases

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if -

(i) a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii) the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if -

(I) the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II) such units were rent-restricted within the meaning of subparagraph (A).

The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3) Date for meeting requirements

(A) In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B) Buildings which rely on later buildings for qualification

(i) In general

In determining whether a building (hereinafter in this subparagraph referred to as the 'prior building') is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii) Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii) Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C) Special rule

A building -

(i) other than the 1st building placed in service as part of a project, and

(ii) other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building,

shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D) Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in

subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4) Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term 'gross rent' shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5) Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6) Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if -

(A) all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B) the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located.

Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent- restricted.

(7) Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(h) Limitation on aggregate credit allowable with respect to projects located in a State

(1) Credit may not exceed credit amount allocated to building

(A) In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B) Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C) Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing

credit dollar amount to such building beginning in a specified later taxable year.

(D) Exception where increase in qualified basis

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii) Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of -

(I) the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II) the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii) Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E) Exception where 10 percent of cost incurred

(i) In general

An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii) Qualified building

For purposes of clause (i), the term 'qualified building' means any building which is part of a project if the taxpayer's basis in such project (as of the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F) Allocation of credit on a project basis

(i) In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if -

(I) the allocation is made to the project for a calendar year during the project period,

(II) the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III) the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is

placed in service.

(ii) Project period

For purposes of clause (i), the term 'project period' means the period -

(I) beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II) ending with the calendar year the last building is placed in service as part of such project.

(2) Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year -

(A) shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B) shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3) Housing credit dollar amount for agencies

(A) In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B) State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C) State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of -

(i) $1.25 multiplied by the State population,

(ii) the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(iii) the amount of State housing credit ceiling returned in the calendar year, plus

(iv) the amount (if any) allocated under subparagraph (D) to such State by the Secretary.

For purposes of clause (ii), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (i) and (iii) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D) Unused housing credit carryovers allocated among certain States

(i) In general

The unused housing credit carryover of a State for any

calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii) Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(ii)) over the excess (if any) of -

(I) the aggregate housing credit dollar amount allocated for such year, over

(II) the sum of the amounts described in clauses (i) and (iii) of subparagraph (C).

(iii) Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv) Qualified State

For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State -

(I) which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II) for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E) Special rule for States with constitutional home rule cities

For purposes of this subsection -

(i) In general

The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as -

(I) the population of such city, bears to

(II) the population of the entire State.

(ii) Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii) Constitutional home rule city

For purposes of this paragraph, the term 'constitutional home rule city' has the meaning given such term by section 146(d)(3)(C).

(F) State may provide for different allocation

Rules similar to the rules of section 146(e) (other than

paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G) Population

For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(4) Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A) In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if -

(i) such obligation is taken into account under section 146, and

(ii) principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

(B) Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5) Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A) In general

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B) Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C) Qualified nonprofit organization

For purposes of this paragraph, the term 'qualified nonprofit organization' means any organization if -

(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

(ii) such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; (FOOTNOTE 4) and

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(FOOTNOTE 4) So in original. The semicolon probably should be a comma.

(iii) 1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D) Treatment of certain subsidiaries

(i) In general

For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii) Qualified corporation

For purposes of clause (i), the term 'qualified corporation' means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E) State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6) Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A) In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B) Extended low-income housing commitment

For purposes of this paragraph, the term 'extended low-income housing commitment' means any agreement between the taxpayer and the housing credit agency -

(i) which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii),

(ii) which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i),

(iii) which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person,

(iv) which is binding on all successors of the taxpayer, and

(v) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C) Allocation of credit may not exceed amount necessary to support commitment

(i) In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii) Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of

credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D) Extended use period

For purposes of this paragraph, the term 'extended use period' means the period -

(i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii) ending on the later of -

(I) the date specified by such agency in such agreement, or

(II) the date which is 15 years after the close of the compliance period.

(E) Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i) In general

The extended use period for any building shall terminate -

(I) on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II) on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building.

Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii) Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination -

(I) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II) any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F) Qualified contract

For purposes of subparagraph (E), the term 'qualified contract' means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of -

(i) the sum of -

(I) the outstanding indebtedness secured by, or with respect to, the building,

(II) the adjusted investor equity in the building, plus

(III) other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii) cash distributions from (or available for distribution

from) the project.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G) Adjusted investor equity

(i) In general

For purposes of subparagraph (E), the term 'adjusted investor equity' means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to -

(I) such amount, multiplied by

(II) the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for 'calendar year 1987'.

An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii) Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause (i).

(iii) Base calendar year

For purposes of this subparagraph, the term 'base calendar year' means the calendar year with or within which the 1st taxable year of the credit period ends.

(H) Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I) Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J) Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K) Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7) Special rules

(A) Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B) Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C) Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i) In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii) Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which -

(I) the housing credit dollar amount allocated to such building bears to

(II) the credit amount determined in accordance with clause (iii).

(iii) Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if -

(I) this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II) subsection (f)(3)(A) were applied without regard to 'the percentage equal to 2/3 of'.

(D) Housing credit agency to specify applicable percentage and maximum qualified basis

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(c)(8) Other definitions

For purposes of this subsection -

(c)(8)(A) Housing credit agency

The term 'housing credit agency' means any agency authorized to carry out this subsection.

(c)(8)(B) Possessions treated as States

The term 'State' includes a possession of the United States.

(i) Definitions and special rules
For purposes of this section -
(1) Compliance period
The term 'compliance period' means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.
(2) Determination of whether building is federally subsidized
(A) In general
Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.
(B) Election to reduce eligible basis by balance of loan or proceeds of obligations
A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) -
(i) in the case of a loan, the principal amount of such loan, and
(ii) in the case of a tax-exempt obligation, the proceeds of such obligation.
(C) Special rule for subsidized construction financing
Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if -
(i) such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and
(ii) such obligation is redeemed, and such loan is repaid, before such building is placed in service.
(D) Below market Federal loan
For purposes of this paragraph, the term 'below market Federal loan' means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).
(3) Low-income unit
(A) In general

The term 'low-income unit' means any unit in a building if -

(i) such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii) the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B) Exceptions

(i) In general

A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii) Suitability for occupancy

For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii) Transitional housing for homeless

For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building -

(I) which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II) in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv) Single-room occupancy units

For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C) Special rule for buildings having 4 or fewer units

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by -

(i) any individual who occupies a residential unit in such building, or

(ii) any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D) Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is -

(i) a student and receiving assistance under title IV of the Social Security Act, or

(ii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.

(E) Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i) In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan

of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii) Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii) Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4) New building

The term 'new building' means a building the original use of which begins with the taxpayer.

(5) Existing building

The term 'existing building' means any building which is not a new building.

(6) Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7) Impact of tenant's right of 1st refusal to acquire property

(A) In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B) Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of -

(i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(j) Recapture of credit

(1) In general

If -

(A) as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B) the amount of such basis as of the close of the preceding taxable year,

then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2) Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of -

(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3) Accelerated portion of credit

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of -

(A) the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B) the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) Only basis for which credit allowed taken into account

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C) No recapture of additional credit allowable by reason of subsection (f)(3)

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, D, or G of this part.

(E) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or

replacement within a reasonable period established by the Secretary.

(F) No recapture where de minimis changes in floor space

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if -

(i) such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and

(ii) the building is a qualified low-income building after such change.

(5) Certain partnerships treated as the taxpayer

(A) In general

For purposes of applying this subsection to a partnership to which this paragraph applies -

(i) such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed,

(ii) the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership,

(iii) paragraph (4)(A) shall not apply, and

(iv) the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B) Partnerships to which paragraph applies

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C) Special rules

(i) Husband and wife treated as 1 partner

For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii) Election irrevocable

Any election under subparagraph (B), once made, shall be irrevocable.

(6) No recapture on disposition of building (or interest therein) where bond posted

In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if -

(A) the taxpayer furnishes to the Secretary a bond in an amount satifactory (FOOTNOTE 5) to the Secretary and for the period required by the Secretary, and

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(FOOTNOTE 5) So in original. Probably should be 'satisfactory'.

(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(k) Application of at-risk rules

For purposes of this section -

(1) In general

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and

section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2) Special rules for determining qualified person

For purposes of paragraph (1) -

(A) In general

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization -

(i) is actively and regularly engaged in the business of lending money, or

(ii) is a person described in section 49(a)(1)(D)(iv)(II).

(B) Financing secured by property

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if -

(i) a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii) the proceeds from the financing (if any) are applied to acquire or improve such building.. (FOOTNOTE 6)

(FOOTNOTE 6) So in original.

(C) Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D) Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of -

(i) the date on which such financing matures,

(ii) the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii) the date of its refinancing or the sale of the building to which such financing relates.

In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3) Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below

the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4) Failure to fully repay

(A) In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period -

(i) beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii) ending with the due date for the taxable year in which such failure occurs,

determined by using the underpayment rate and method under section 6621.

(B) Applicable portion

For purposes of subparagraph (A), the term 'applicable portion' means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C) Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(l) Certifications and other reports to Secretary

(1) Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes) -

(A) the taxable year, and calendar year, in which such building was placed in service,

(B) the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C) the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D) the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E) such other information as the Secretary may require.

In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2) Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth -

(A) the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B) the information described in paragraph (1)(C) for the taxable year, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3) Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying -

(A) the amount of housing credit amount allocated to each building for such year,

(B) sufficient information to identify each such building and the taxpayer with respect thereto, and

(C) such other information as the Secretary may require.

The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless -

(i) such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part, and

(ii) such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.

(B) Qualified allocation plan

For purposes of this paragraph, the term 'qualified allocation plan' means any plan -

(i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii) which also gives preference in allocating housing credit dollar amounts among selected projects to -

(I) projects serving the lowest income tenants, and

(II) projects obligated to serve qualified tenants for the longest periods, and

(iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of.

(C) Certain selection criteria must be used
The selection criteria set forth in a qualified allocation plan must include
(i) project location,
(ii) housing needs characteristics,
(iii) project characteristics,
(iv) sponsor characteristics,
(v) participation of local tax-exempt organizations,
(vi) tenant populations with special housing needs, and
(vii) public housing waiting lists.

(D) Application to bond financed projects
Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2) Credit allocated to building not to exceed amount necessary to assure project feasibility

(A) In general
The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B) Agency evaluation
In making the determination under subparagraph (A), the housing credit agency shall consider -
(i) the sources and uses of funds and the total financing planned for the project,
(ii) any proceeds or receipts expected to be generated by reason of tax benefits, and
(iii) the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries.
Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C) Determination made when credit amount applied for and when building placed in service

(i) In general
A determination under subparagraph (A) shall be made as of each of the following times:
(I) The application for the housing credit dollar amount.
(II) The allocation of the housing credit dollar amount.
(III) The date the building is placed in service.

(ii) Certification as to amount of other subsidies
Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D) Application to bond financed projects
Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n) Regulations
The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section,

including regulations -

(1) dealing with -

(A) projects which include more than 1 building or only a portion of a building,

(B) buildings which are placed in service in portions,

(2) providing for the application of this section to short taxable years,

(3) preventing the avoidance of the rules of this section, and

(4) providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

(o) Termination

(1) In general

Except as provided in paragraph (2), for any calendar year after 1991 -

(A) clause (i) of subsection (h)(3)(C) shall not apply, and

(B) subsection (h)(4) shall not apply to any building placed in service after 1991.

(2) Exception for bond-financed buildings in progress

For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1992 if -

(A) the bonds with respect to such building are issued before 1992,

(B) the taxpayer's basis in the project (of which the building is a part) as of December 31, 1991, is more than 10 percent of the taxpayer's reasonably expected basis in such project as of December 31, 1993, and

(C) such building is placed in service before January 1, 1994.

SOURCE

(Added Pub. L. 99-514, title II, Sec. 252(a), Oct. 22, 1986, 100 Stat. 2189, and amended Pub. L. 99-509, title VIII, Sec. 8072(a), Oct. 21, 1986, 100 Stat. 1964; Pub. L. 100-647, title I, Sec. 1002(l)(1)-(25), (32), 1007(g)(3)(B), title IV, Sec. 4003(a), (b)(1), (3), 4004(a), Nov. 10, 1988, 102 Stat. 3373-3381, 3435, 3643, 3644; Pub. L. 101-239, title VII, Sec. 7108(a)(1), (b)-(e)(2), (f)-(m), (n)(2)-(q), 7811(a), 7831(c), 7841(d)(13)-(15), Dec. 19, 1989, 103 Stat. 2306-2321, 2406, 2426, 2429; Pub. L. 101-508, title XI, Sec. 11407(a)(1), (b)(1)-(9), 11701(a)(1)-(3)(A), (4), (5)(A), (6)-(10), 11812(b)(3), 11813(b)(3), Nov. 5, 1990, 104 Stat. 1388-474, 1388-475, 1388-505 to 1388-507, 1388-535, 1388-551.)

REFTEXT

References In Text

Section 8 of the United States Housing Act of 1937, referred to in subsecs. (c)(2), (d)(6)(B)(i), and (g)(2)(B), is classified to section 1437f of Title 42, The Public Health and Welfare. Section 8(e)(2) of the Act was repealed by Pub. L. 101-625, title II, Sec. 289(b)(1), Nov. 28, 1990, 104 Stat. 4128, effective Oct. 1, 1991, but to remain in effect with respect to single room occupancy dwellings as authorized by subchapter IV (Sec. 11361 et seq.) of chapter 119 of Title 42. See section 12839(b) of Title 42.

The Stewart B. McKinney Homeless Assistance Act of 1988, referred to in subsec. (c)(2), probably means the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77, July 22, 1987, 101 Stat. 482, as amended, which is classified principally to chapter 119 (Sec. 11301 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

The date of the enactment of this sentence, referred to in subsec. (c)(2), is the date of the enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Section 201(a) of the Tax Reform Act of 1986, referred to in subsec. (c)(2)(B), is section 201(a) of Pub. L. 99-514, which amended section 168 of this title generally.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(D)(i)(I), (6)(B), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (d)(2)(D)(i)(I), (5)(B), is the date of the enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Sections 221(d)(3) and 236 of the National Housing Act, referred to in subsec. (d)(6)(B)(ii), are classified to sections 1715l(d)(3) and 1715z-1, respectively, of Title 12, Banks and Banking.

Sections 515 and 502(c) of the Housing Act of 1949, referred to in subsecs. (d)(6)(B)(iii), (C)(i) and (g)(2)(B)(iv), are classified to sections 1485 and 1472(c), respectively, of Title 42, The Public Health and Welfare.

The Emergency Low Income Housing Preservation Act of 1987, referred to in subsec. (d)(6)(C)(i), now the Low-Income Housing Preservation and Resident Homeownership Act of 1990, is title II of Pub. L. 100-242, Feb. 5, 1988, 101 Stat. 1877, as amended. Subtitle B of title II, which was formerly set out as a note under section 1715l of Title 12, Banks and Banking, and which amended section 1715z-6 of Title 12, was amended generally by Pub. L. 101-625 and is classified to chapter 42 (Sec. 4101 et seq.) of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 4101 of Title 12 and Tables.

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (d)(6)(D), is classified to section 1813 of Title 12.

The date of the enactment of this subparagraph, referred to in subsec. (g)(2)(E), is the date of enactment of Pub. L. 100-647, which was approved Nov. 10, 1988.

Sections 106, 107, and 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence), referred to in subsec. (i)(2)(D), are classified to sections 5306, 5307, and 5308 of Title 42, The Public Health and Welfare, as in effect on the date of enactment of Pub. L. 101-239, which was approved Dec. 19, 1989.

The date of the enactment of this clause, referred to in subsec. (i)(3)(B)(iii)(I), is date of enactment of Pub. L. 101-239, which was approved Dec. 19, 1989.

The Social Security Act, referred to in subsec. (i)(3)(D)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title IV of the Act is classified generally to subchapter IV (Sec. 601 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Job Training Partnership Act, referred to in subsec. (i)(3)(D)(ii), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, which is classified generally to chapter 19 (Sec. 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

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Prior Provisions

A prior section 42, added Pub. L. 94-12, title II, Sec. 203(a), Mar. 29, 1975, 89 Stat. 29, and amended Pub. L. 94-164, Sec. 3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94-455, title IV, Sec. 401(a)(2)(A), (B), title V, Sec. 503(b)(4), title XIX, Sec. 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95-30, title I, Sec. 101(c), May 23, 1977, 91 Stat. 132, which related to the general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding $9,000 or (2) $35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978 pursuant to the terms of: (1) Pub. L. 94-12, Sec. 209(a) as amended by Pub. L. 94-164, Sec. 2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94-164, Sec. 3(b) as amended by Pub. L. 94-455, Sec. 401(a)(1) and Pub. L. 95-30, Sec. 103(a); and (3) Pub. L. 94-455, Sec. 401(e), as amended by Pub. L. 95-30, Sec. 103(c) and Pub. L. 95-600, title I, Sec. 103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

Another prior section 42 was renumbered section 35 of this title.

Amendments

1990 - Subsec. (b)(1). Pub. L. 101-508, Sec. 11701(a)(1)(B), struck out at end 'A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.'

Subsec. (c)(2). Pub. L. 101-508, Sec. 11701(a)(1)(A), inserted at end 'Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) of the United States Housing Act of 1937.'

Pub. L. 101-508, Sec. 11407(b)(5)(A), inserted before period at end of last sentence '(other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence))'.

Subsec. (d)(2)(D)(i)(I). Pub. L. 101-508, Sec. 11812(b)(3), inserted '(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)' after 'section 167(k).'

Subsec. (d)(2)(D)(ii)(V). Pub. L. 101-508, Sec. 11407(b)(8), added subcl. (V).

Subsec. (d)(5)(B). Pub. L. 101-508, Sec. 11812(b)(3), inserted '(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)' after 'section 167(k).'

Subsec. (d)(5)(C)(ii)(I). Pub. L. 101-508, Sec. 11407(b)(4), inserted at end 'If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.'

Pub. L. 101-508, Sec. 11701(a)(2)(B), inserted before period at end 'for such year'.

Pub. L. 101-508, Sec. 11701(a)(2)(A), which directed the insertion of 'which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract,' after 'census tract', was executed by making the insertion after 'any census tract' to reflect the probable intent of Congress.

Subsec. (g)(2)(B)(iv). Pub. L. 101-508, Sec. 11407(b)(3), added cl. (iv).

Subsec. (g)(2)(D)(i). Pub. L. 101-508, Sec. 11701(a)(3)(A), inserted before period at end 'and such unit continues to be rent-restricted'.

Subsec. (g)(2)(D)(ii). Pub. L. 101-508, Sec. 11701(a)(4), inserted at end 'In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting '170 percent' for '140 percent' and by substituting 'any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income' for 'any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation'.'

Subsec. (g)(3)(A). Pub. L. 101-508, Sec. 11701(a)(5)(A), substituted 'the 1st year of the credit period for such building' for 'the 12-month period beginning on the date the building is placed in service'.

Subsec. (h)(3)(C). Pub. L. 101-508, Sec. 11701(a)(6)(A), substituted 'the sum of the amounts described in clauses (i) and (iii)' for 'the amount described in clause (i)' in second sentence.

Subsec. (h)(3)(D)(ii)(II). Pub. L. 101-508, Sec. 11701(a)(6)(B), substituted 'the sum of the amounts described in clauses (i) and (iii)' for 'the amount described in clause (i)'.

Subsec. (h)(5)(B). Pub. L. 101-508, Sec. 11407(b)(9)(A), inserted 'own an interest in the project (directly or through a partnership) and' after 'nonprofit organization is to'.

Subsec. (h)(5)(C)(i) to (iii). Pub. L. 101-508, Sec. 11407(b)(9)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (h)(5)(D)(i). Pub. L. 101-508, Sec. 11407(b)(9)(C), inserted 'ownership and' before 'material participation'.

Subsec. (h)(6)(B)(i). Pub. L. 101-508, Sec. 11701(a)(7)(A), inserted before comma at end 'and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii)'.

Subsec. (h)(6)(B)(ii). Pub. L. 101-508, Sec. 11701(a)(7)(B), substituted 'requirement and prohibitions' for 'requirement'.

Subsec. (h)(6)(B)(iii) to (v). Pub. L. 101-508, Sec. 11701(a)(8)(A), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (h)(6)(E)(i)(I). Pub. L. 101-508, Sec. 11701(a)(9), inserted before comma 'unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period'.

Subsec. (h)(6)(E)(ii)(II). Pub. L. 101-508, Sec. 11701(a)(8)(C), inserted before period at end 'not otherwise permitted under this section'.

Subsec. (h)(6)(F). Pub. L. 101-508, Sec. 11701(a)(8)(D), inserted 'the nonlow-income portion of the building for fair market value and' before 'the low-income portion' in introductory provisions.

Subsec. (h)(6)(J) to (L). Pub. L. 101-508, Sec. 11701(a)(8)(B), redesignated subpars. (K) and (L) as (J) and (K), respectively, and struck out former subpar. (J) which related to sales of less than the low-income portions of a building.

Subsec. (i)(3)(D). Pub. L. 101-508, Sec. 11407(b)(6), substituted 'Certain students' for 'Students in government-supported job training programs' in heading and amended text generally. Prior to amendment, text read as follows: 'A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws.'

Subsec. (i)(7). Pub. L. 101-508, Sec. 11701(a)(10), redesignated par. (8) as (7).

Subsec. (i)(7)(A). Pub. L. 101-508, Sec. 11407(b)(1), substituted 'the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency' for 'the tenants of such building'.

Subsec. (i)(8). Pub. L. 101-508, Sec. 11701(a)(10), redesignated par. (8) as (7).

Subsec. (k)(1). Pub. L. 101-508, Sec. 11813(b)(3)(A), substituted '49(a)(1)' for '46(c)(8)', '49(a)(2)' for '46(c)(9)', and '49(b)(1)' for '47(d)(1)'.

Subsec. (k)(2)(A)(ii), (D). Pub. L. 101-508, Sec. 11813(b)(3)(B), substituted '49(a)(1)(D)(iv)(II)' for '46(c)(8)(D)(iv)(II)'.

Subsec. (m)(1)(B)(ii) to (iv). Pub. L. 101-508, Sec. 11407(b)(7)(B), redesignated cls. (iii) and (iv) as (ii) and (iii),

respectively, and struck out former cl. (ii) which read as follows: 'which gives the highest priority to those projects as to which the highest percentage of the housing credit dollar amount is to be used for project costs other than the cost of intermediaries unless granting such priority would impede the development of projects in hard-to-develop areas,'.

Pub. L. 101-508, Sec. 11407(b)(2), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: 'which provides a procedure that the agency will follow in notifying the Internal Revenue Service of noncompliance with the provisions of this section which such agency becomes aware of.'

Subsec. (m)(2)(B). Pub. L. 101-508, Sec. 11407(b)(7)(A), added cl. (iii) and inserted provision that cl. (iii) not be applied so as to impede the development of projects in hard-to-develop areas.

Subsec. (o)(1). Pub. L. 101-508, Sec. 11407(a)(1)(A), substituted '1991' for '1990' wherever appearing.

Subsec. (o)(2). Pub. L. 101-508, Sec. 11407(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: 'For purposes of paragraph (1)(B), a building shall be treated as placed in service before 1990 if -

'(A) the bonds with respect to such building are issued before 1990,

'(B) such building is constructed, reconstructed, or rehabilitated by the taxpayer,

'(C) more than 10 percent of the reasonably anticipated cost of such construction, reconstruction, or rehabilitation has been incurred as of January 1, 1990, and some of such cost is incurred on or after such date, and

'(D) such building is placed in service before January 1, 1992.'

1989 - Subsec. (b)(1). Pub. L. 101-239, Sec. 7108(h)(5), inserted at end 'A building shall not be treated as described in subparagraph (B) if, at any time during the credit period, moderate rehabilitation assistance is provided with respect to such building under section 8(e)(2) of the United States Housing Act of 1937.'

Subsec. (b)(3)(C). Pub. L. 101-239, Sec. 7108(c)(2), which directed amendment of subpar. (C) by substituting 'subsection (h)(7)' for 'subsection (h)(6))', was executed by substituting 'subsection (h)(7)' for 'subsection (h)(6)', as the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 101-239, Sec. 7108(i)(2), added subpar. (E).

Subsec. (d)(1). Pub. L. 101-239, Sec. 7108(l)(1), inserted 'as of the close of the 1st taxable year of the credit period' before period at end.

Subsec. (d)(2)(A). Pub. L. 101-239, Sec. 7108(l)(2), substituted 'subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and' for 'subparagraph (B), the sum of -

'(I) the portion of its adjusted basis attributable to its acquisition cost, plus

'(II) amounts chargeable to capital account and incurred by the taxpayer (before the close of the 1st taxable year of the credit period for such building) for property (or additions or improvements to property) of a character subject to the allowance for depreciation, and'.

Subsec. (d)(2)(B)(iv). Pub. L. 101-239, Sec. 7108(d)(1), added

cl. (iv).

Subsec. (d)(2)(C). Pub. L. 101-239, Sec. 7108(l)(3)(A), substituted 'Adjusted basis' for 'Acquisition cost' in heading and 'adjusted basis' for 'cost' in text.

Subsec. (d)(5). Pub. L. 101-239, Sec. 7108(l)(3)(B), substituted 'Special rules for determining eligible basis' for 'Eligible basis determined when building placed in service' in heading.

Subsec. (d)(5)(A). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: 'Except as provided in subparagraphs (B) and (C), the eligible basis of any building for the entire compliance period for such building shall be its eligible basis on the date such building is placed in service (increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II)).'

Subsec. (d)(5)(B). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (d)(5)(C). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Pub. L. 101-239, Sec. 7811(a)(1), inserted 'section' before '167(k)' in heading.

Subsec. (d)(5)(D). Pub. L. 101-239, Sec. 7108(l)(3)(B), redesignated subpar. (D) as (C).

Pub. L. 101-239, Sec. 7108(g), added subpar. (D).

Subsec. (d)(6)(A)(i). Pub. L. 101-239, Sec. 7841(d)(13), substituted 'Farmers Home Administration' for 'Farmers' Home Administration'.

Subsec. (d)(6)(C) to (E). Pub. L. 101-239, Sec. 7108(f), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (d)(7)(A). Pub. L. 101-239, Sec. 7831(c)(6), inserted '(or interest therein)' after 'subparagraph (B)' in introductory provisions.

Subsec. (d)(7)(A)(ii). Pub. L. 101-239, Sec. 7841(d)(14), substituted 'under subsection (a)' for 'under sebsection (a)'.

Subsec. (e)(2)(A). Pub. L. 101-239, Sec. 7841(d)(15), substituted 'to capital account' for 'to captial account'.

Subsec. (e)(3). Pub. L. 101-239, Sec. 7108(d)(3), substituted 'Minimum expenditures to qualify' for 'Average of rehabilitation expenditures must be $2,000 or more' in heading, added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: 'Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if the qualified basis attributable to such expenditures incurred during any 24-month period, when divided by the low-income units in the building, is $2,000 or more.'

Subsec. (e)(5). Pub. L. 101-239, Sec. 7108(l)(3)(C), substituted 'subsection (d)(2)(A)(i)' for 'subsection (d)(2)(A)(i)(II)'.

Subsec. (f)(4). Pub. L. 101-239, Sec. 7831(c)(4), added par. (4).

Subsec. (f)(5). Pub. L. 101-239, Sec. 7108(d)(2), added par. (5).

Subsec. (g)(2)(A). Pub. L. 101-239, Sec. 7108(e)(2), inserted at end 'For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income

housing project.'

Pub. L. 101-239, Sec. 7108(e)(1)(B), substituted 'the imputed income limitation applicable to such unit' for 'the income limitation under paragraph (1) applicable to individuals occupying such unit'.

Subsec. (g)(2)(B). Pub. L. 101-239, Sec. 7108(h)(2), added cl. (iii) and concluding provisions which defined 'supportive service'.

Subsec. (g)(2)(C) to (E). Pub. L. 101-239, Sec. 7108(e)(1)(A), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (g)(3)(D). Pub. L. 101-239, Sec. 7108(m)(3), added subpar. (D).

Subsec. (g)(4). Pub. L. 101-239, Sec. 7108(n)(2), struck out '(other than section 142(d)(4)(B)(iii))' after 'in applying such provisions'.

Subsec. (g)(7). Pub. L. 101-239, Sec. 7108(h)(3), added par. (7).

Subsec. (h)(1)(B). Pub. L. 101-239, Sec. 7108(m)(2), substituted '(E), or (F)' for 'or (E)'.

Subsec. (h)(1)(F). Pub. L. 101-239, Sec. 7108(m)(1), added subpar. (F).

Subsec. (h)(3)(C) to (G). Pub. L. 101-239, Sec. 7108(b)(1), added subpars. (C) and (D), redesignated former subpars. (D) to (F) as (E) to (G), respectively, and struck out former subpar. (C) which read as follows: 'The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to $1.25 multiplied by the State population.'

Subsec. (h)(4)(B). Pub. L. 101-239, Sec. 7108(j), substituted '50 percent' for '70 percent' in heading and in text.

Subsec. (h)(5)(D)(ii). Pub. L. 101-239, Sec. 7811(a)(2), substituted 'clause (i)' for 'clause (ii)'.

Subsec. (h)(5)(E). Pub. L. 101-239, Sec. 7108(b)(2)(A), substituted 'subparagraph (F)' for 'subparagraph (E)'.

Subsec. (h)(6). Pub. L. 101-239, Sec. 7108(c)(1), added par. (6). Former par. (6) redesignated (7).

Subsec. (h)(6)(B) to (E). Pub. L. 101-239, Sec. 7108(b)(2)(B), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that the housing credit dollar amount could not be carried over to any other calendar year.

Subsec. (h)(7), (8). Pub. L. 101-239, Sec. 7108(c)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (i)(2)(D). Pub. L. 101-239, Sec. 7108(k), inserted at end 'Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).'

Subsec. (i)(3)(B). Pub. L. 101-239, Sec. 7108(i)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: 'A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy (as determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes) and used other than on a transient basis. For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.'

Pub. L. 101-239, Sec. 7831(c)(1), inserted '(as determined under regulations prescribed by the Secretary taking into account local

health, safety, and building codes)' after 'suitable for occupancy'.

Pub. L. 101-239, Sec. 7108(h)(1), inserted at end 'For purposes of the preceding sentence, a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.'

Subsec. (i)(3)(D). Pub. L. 101-239, Sec. 7831(c)(2), added subpar. (D).

Subsec. (i)(3)(E). Pub. L. 101-239, Sec. 7108(h)(4), added subpar. (E).

Subsec. (i)(6). Pub. L. 101-239, Sec. 7831(c)(3), added par. (6).

Subsec. (i)(8). Pub. L. 101-239, Sec. 7108(q), added par. (8).

Subsec. (k)(2)(D). Pub. L. 101-239, Sec. 7108(o), added provision at end relating to the applicability of cl. (ii) to qualified nonprofit organizations not described in section 46(c)(8)(D)(iv)(II) with respect to a building.

Subsec. (l)(1). Pub. L. 101-239, Sec. 7108(p), in introductory provisions, substituted 'Following' for 'Not later than the 90th day following' and inserted 'at such time and' before 'in such form'.

Subsec. (m). Pub. L. 101-239, Sec. 7108(o), added subsec. (m). Former subsec. (m) redesignated (n).

Subsec. (m)(4). Pub. L. 101-239, Sec. 7831(c)(5), added par. (4).

Subsec. (n). Pub. L. 101-239, Sec. 7108(o), redesignated subsec. (m) as (n). Former subsec. (n) redesignated (o).

Pub. L. 101-239, Sec. 7108(a)(1), amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: 'The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989.'

Subsec. (o). Pub. L. 101-239, Sec. 7108(o), redesignated subsec. (n) as (o).

1988 - Subsec. (b)(2)(A). Pub. L. 100-647, Sec. 1002(l)(1)(A), substituted 'for the earlier of - ' for 'for the month in which such building is placed in service' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(2)(C)(ii). Pub. L. 100-647, Sec. 1002(l)(1)(B), substituted 'the month applicable under clause (i) or (ii) of subparagraph (A)' for 'the month in which the building was placed in service'.

Subsec. (b)(3). Pub. L. 100-647, Sec. 1002(l)(9)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: 'For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).'

Subsec. (c)(2)(A). Pub. L. 100-647, Sec. 1002(l)(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: 'which at all times during the compliance period with respect to such building is part of a qualified low-income housing project, and'.

Subsec. (d)(2)(D)(ii). Pub. L. 100-647, Sec. 1002(l)(3), substituted 'Special rules for certain transfers' for 'Special rule for nontaxable exchanges' in heading and amended text generally. Prior to amendment, text read as follows: 'For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service in connection with the acquisition of the building in a transaction in which the basis of the building in the

hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom aquired.'

Subsec. (d)(3). Pub. L. 100-647, Sec. 1002(l)(4), amended par. (3) generally. Prior to amendment, par. (3) read as follows: 'The eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.'

Subsec. (d)(5)(A). Pub. L. 100-647, Sec. 1002(l)(6)(B), substituted 'subparagraphs (B) and (C)' for 'subparagraph (B)'.

Pub. L. 100-647, Sec. 1002(l)(5), inserted '(increased, in the case of an existing building which meets the requirements of paragraph (2)(B), by the amounts described in paragraph (2)(A)(i)(II))' before period at end.

Subsec. (d)(5)(C). Pub. L. 100-647, Sec. 1002(l)(6)(A), added subpar. (C).

Subsec. (d)(6)(A)(iii). Pub. L. 100-647, Sec. 1002(l)(7), struck out cl. (iii) which related to other circumstances of financial distress.

Subsec. (d)(6)(B)(ii). Pub. L. 100-647, Sec. 1002(l)(8), struck out 'of 1934' after 'Act'.

Subsec. (f)(1). Pub. L. 100-647, Sec. 1002(l)(2)(B), substituted 'beginning with - ' for 'beginning with' and subpars. (A) and (B) and concluding provisions for 'the taxable year in which the building is placed in service or, at the election of the taxpayer, the succeeding taxable year. Such an election, once made, shall be irrevocable.'

Subsec. (f)(3). Pub. L. 100-647, Sec. 1002(l)(9)(A), amended par. (3) generally. Prior to amendment, par. (3) 'Special rule where increase in qualified basis after 1st year of credit period' read as follows:

'(A) Credit increased. - If -

'(i) as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of any building exceeds

'(ii) the qualified basis of such building as of the close of the 1st year of the credit period,

the credit allowable under subsection (a) for the taxable year (determined without regard to this paragraph) shall be increased by an amount equal to the product of such excess and the percentage equal to 2/3 of the applicable percentage for such building.

'(B) 1st year computation applies. - A rule similar to the rule of paragraph (2)(A) shall apply to the additional credit allowable by reason of this paragraph for the 1st year in which such additional credit is allowable.'

Subsec. (g)(2)(B)(i). Pub. L. 100-647, Sec. 1002(l)(10), struck out 'Federal' after 'comparable'.

Subsec. (g)(2)(C). Pub. L. 100-647, Sec. 1002(l)(11), added subpar. (C).

Subsec. (g)(3). Pub. L. 100-647, Sec. 1002(l)(12), amended par. (3) generally, substituting subpars. (A) to (C) for former subpars. (A) and (B).

Subsec. (g)(4). Pub. L. 100-647, Sec. 1002(l)(13), inserted '; except that, in applying such provisions (other than section 142(d)(4)(B)(iii)) for such purposes, the term 'gross rent' shall

have the meaning given such term by paragraph (2)(B) of this subsection' before period at end.

Subsec. (g)(6). Pub. L. 100-647, Sec. 1002(l)(32), added par. (6).

Subsec. (h)(1). Pub. L. 100-647, Sec. 1002(l)(14)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: 'No credit shall be allowed by reason of this section for any taxable year with respect to any building in excess of the housing credit dollar amount allocated to such building under this subsection. An allocation shall be taken into account under the preceding sentence only if it occurs not later than the earlier of -

'(A) the 60th day after the close of the taxable year, or

'(B) the close of the calendar year in which such taxable year ends.'

Subsec. (h)(1)(B). Pub. L. 100-647, Sec. 4003(b)(1), substituted '(C), (D), or (E)' for '(C) or (D)'.

Subsec. (h)(1)(E). Pub. L. 100-647, Sec. 4003(a), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 100-647, Sec. 1002(l)(15), substituted 'if - ' for 'and which is taken into account under section 146' and added cls. (i) and (ii).

Subsec. (h)(5)(D), (E). Pub. L. 100-647, Sec. 1002(l)(16), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (h)(6)(B)(ii). Pub. L. 100-647, Sec. 1002(l)(14)(B), struck out cl. (ii) which read as follows:

'(ii) Allocation may not be earlier than year in which building placed in service. - A housing credit agency may allocate its housing credit dollar amount for any calendar year only to buildings placed in service before the close of such calendar year.'

Subsec. (h)(6)(D). Pub. L. 100-647, Sec. 1002(l)(17), amended subpar. (D) generally. Prior to amendment, subpar. (D) 'Credit allowable determined without regard to averaging convention, etc.' read as follows: 'For purposes of this subsection, the credit allowable under subsection (a) with respect to any building shall be determined -

'(i) without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

'(ii) by applying subsection (f)(3)(A) without regard to 'the percentage equal to 2/3 of'.'

Subsec. (h)(6)(E). Pub. L. 100-647, Sec. 1002(l)(18), added subpar. (E).

Subsec. (i)(2)(A). Pub. L. 100-647, Sec. 1002(l)(19)(A), inserted 'or any prior taxable year' after 'such taxable year' and substituted 'is or was outstanding' for 'is outstanding' and 'are or were used' for 'are used'.

Subsec. (i)(2)(B). Pub. L. 100-647, Sec. 1002(l)(19)(B), substituted 'balance of loan or proceeds of obligations' for 'outstanding balance of loan' in heading and amended text generally. Prior to amendment, text read as follows: 'A loan shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude an amount equal to the outstanding balance of such loan from the eligible basis of the building for purposes of subsection (d).'

Subsec. (i)(2)(C). Pub. L. 100-647, Sec. 1002(l)(19)(C), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (i)(2)(D). Pub. L. 100-647, Sec. 1002(l)(19)(C), (D), redesignated former subpar. (C) as (D) and substituted 'this paragraph' for 'subparagraph (A)'.

Subsec. (j)(4)(D). Pub. L. 100-647, Sec. 1007(g)(3)(B), substituted 'D, or G' for 'or D'.

Subsec. (j)(4)(F). Pub. L. 100-647, Sec. 1002(l)(20), added subpar. (F).

Subsec. (j)(5)(B). Pub. L. 100-647, Sec. 4004(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: 'This paragraph shall apply to any partnership -

'(i) more than 1/2 the capital interests, and more than 1/2 the profit interests, in which are owned by a group of 35 or more partners each of whom is a natural person or an estate, and

'(ii) which elects the application of this paragraph.'

Subsec. (j)(5)(B)(i). Pub. L. 100-647, Sec. 1002(l)(21), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: 'which has 35 or more partners each of whom is a natural person or an estate, and'.

Subsec. (j)(6). Pub. L. 100-647, Sec. 1002(l)(22), inserted '(or interest therein)' after 'disposition of building' in heading, and in text inserted 'or an interest therein' after 'of a building'.

Subsec. (k)(2)(B). Pub. L. 100-647, Sec. 1002(l)(23), inserted before period at end ', except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if - ' and cls. (i) and (ii).

Subsec. (l). Pub. L. 100-647, Sec. 1002(l)(24)(B), substituted 'Certifications and other reports to Secretary' for 'Certifications to Secretary' in heading.

Subsec. (l)(2), (3). Pub. L. 100-647, Sec. 1002(l)(24)(A), added par. (2) and redesignated former par. (2) as (3).

Subsec. (n). Pub. L. 100-647, Sec. 4003(b)(3), amended subsec. (n) generally, substituting a single par. for former pars. (1) and (2).

Subsec. (n)(1). Pub. L. 100-647, Sec. 1002(l)(25), inserted ', and, except for any building described in paragraph (2)(B), subsection (h)(4) shall not apply to any building placed in service after 1989' after 'year after 1989'.

1986 - Subsec. (k)(1). Pub. L. 99-509 substituted 'subparagraphs (D)(ii)(II) and (D)(iv)(I)' for 'subparagraph (D)(iv)(I)'.

Effective Date Of 1990 Amendment

Section 11407(a)(3) of Pub. L. 101-508 provided that: 'The amendments made by this subsection (amending this section and repealing provisions set out below) shall apply to calendar years after 1989.'

Section 11407(b)(10) of Pub. L. 101-508 provided that:

'(A) In general. - Except as otherwise provided in this paragraph, the amendments made by this subsection (amending this section) shall apply to -

'(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1990, or

'(ii) buildings placed in service after December 31, 1990, to

the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

'(B) Tenant rights, etc. - The amendments made by paragraphs (1), (6), (8), and (9) (amending this section) shall take effect on the date of the enactment of this Act (Nov. 5, 1990).

'(C) Monitoring. - The amendment made by paragraph (2) (amending this section) shall take effect on January 1, 1992, and shall apply to buildings placed in service before, on, or after such date.

'(D) Study. - The Inspector General of the Department of Housing and Urban Development and the Secretary of the Treasury shall jointly conduct a study of the effectiveness of the amendment made by paragraph (5) (amending this section) in carrying out the purposes of section 42 of the Internal Revenue Code of 1986. The report of such study shall be submitted not later than January 1, 1993, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.'

Section 11701(a)(3)(B) of Pub. L. 101-508 provided that: 'In the case of a building to which (but for this subparagraph) the amendment made by subparagraph (A) (amending this section) does not apply, such amendment shall apply to -

'(i) determinations of qualified basis for taxable years beginning after the date of the enactment of this Act (Nov. 5, 1990), and

'(ii) determinations of qualified basis for taxable years beginning on or before such date except that determinations for such taxable years shall be made without regard to any reduction in gross rent after August 3, 1990, for any period before August 4, 1990.'

Section 11701(n) of Pub. L. 101-508 provided that: 'Except as otherwise provided in this section, any amendment made by this section (amending this section and sections 148, 163, 172, 403, 1031, 1253, 2056, 4682, 4975, 4978B and 6038 of this title, and provisions set out as notes under this section and section 2040 of this title) shall take effect as if included in the provision of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239, title VII) to which such amendment relates.'

Section 11812(c) of Pub. L. 101-508 provided that:

'(1) In general. - Except as provided in paragraph (2), the amendments made by this section (amending this section and sections 56, 167, 168, 312, 381, 404, 460, 642, 1016, 1250, and 7701 of this title) shall apply to property placed in service after the date of the enactment of this Act (Nov. 5, 1990).

'(2) Exception. - The amendments made by this section shall not apply to any property to which section 168 of the Internal Revenue Code of 1986 does not apply by reason of subsection (f)(5) thereof.

'(3) Exception for previously grandfather expenditures. - The amendments made by this section shall not apply to rehabilitation expenditures described in section 252(f)(5) of the Tax Reform Act of 1986 (Pub. L. 99-514) (as added by section 1002(l)(31) of the Technical and Miscellaneous Revenue Act of 1988 (see Transitional Rules note below)).'

Amendment by section 11813(b)(3) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d)

of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 29 of this title.

Effective Date Of 1989 Amendment

Section 7108(r) of Pub. L. 101-239, as amended by Pub. L. 101-508, title XI, Sec. 11701(a)(11), (12), Nov. 5, 1990, 104 Stat. 1388-507, provided that:

'(1) In general. - Except as otherwise provided in this subsection, the amendments made by this section (amending this section and section 142 of this title) shall apply to determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings for calendar years after 1989.

'(2) Buildings not subject to allocation limits. - Except as otherwise provided in this subsection, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, the amendments made by this section shall apply to buildings placed in service after December 31, 1989 but only with respect to bonds issued after such date.

'(3) One-year carryover of unused credit authority, etc. - The amendments made by subsection (b) (amending this section) shall apply to calendar years after 1989, but clauses (ii), (iii), and (iv) of section 42(h)(3)(C) of such Code (as added by this section) shall be applied without regard to allocations for 1989 or any preceding year.

'(4) Additional buildings eligible for waiver of 10-year rule. - The amendments made by subsection (f) (amending this section) shall take effect on the date of the enactment of this Act (Dec. 19, 1989).

'(5) Certifications with respect to 1st year of credit period. - The amendment made by subsection (p) (amending this section) shall apply to taxable years ending on or after December 31, 1989.

'(6) Certain rules which apply to bonds. - Paragraphs (1)(D) and (2)(D) of section 42(m) of such Code, as added by this section, shall apply to obligations issued after December 31, 1989.

'(7) Clarifications. - The amendments made by the following provisions of this section shall apply as if included in the amendments made by section 252 of the Tax Reform Act of 1986 (Pub. L. 99-514, enacting this section and amending sections 38 and 55 of this title):

'(A) Paragraph (1) of subsection (h) (relating to units rented on a monthly basis) (amending this section).

'(B) Subsection (l) (relating to eligible basis for new buildings to include expenditures before close of 1st year of credit period) (amending this section).

'(8) Guidance on difficult development areas and posting of bond to avoid recapture. - Not later than 180 days after the date of the enactment of this Act (Dec. 19, 1989) -

'(A) the Secretary of Housing and Urban Development shall publish initial guidance on the designation of difficult development areas under section 42(d)(5)(C) of such Code, as added by this section, and

'(B) the Secretary of the Treasury shall publish initial guidance under section 42(j)(6) of such Code (relating to no recapture on disposition of building (or interest therein) where bond posted).'

Amendment by section 7811(a) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Amendment by section 7831(c) of Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7831(g) of Pub. L. 101-239, set out as a note under section 1 of this title.

Effective Date Of 1988 Amendment

Amendment by sections 1002(l)(1)-(25), (32) and 1007(g)(3)(B) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 4003(c) of Pub. L. 100-647 provided that: 'The amendments made by this section (amending this section and provisions set out as a note under section 469 of this title) shall apply to amounts allocated in calendar years after 1987.'

Section 4004(b) of Pub. L. 100-647 provided that:

'(1) In general. - The amendment made by subsection (a) (amending this section) shall take effect as if included in the amendments made by section 252 of the Reform Act (section 252 of Pub. L. 99-514, enacting this section and amending sections 38 and 55 of this title).

'(2) Period for election. - The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act (Nov. 10, 1988).'

Effective Date Of 1986 Amendment

Section 8072(b) of Pub. L. 99-509 provided that: 'The amendment made by subsection (a) (amending this section) shall take effect as if included in the amendment made by section 252(a) of the Tax Reform Act of 1986 (enacting this section).'

Effective Date

Section 252(e) of Pub. L. 99-514 provided that:

'(1) In general. - The amendments made by this section (enacting this section and amending sections 38 and 55 of this title) shall apply to buildings placed in service after December 31, 1986, in taxable years ending after such date.

'(2) Special rule for rehabilitation expenditures. - Subsection (e) of section 42 of the Internal Revenue Code of 1986 (as added by this section) shall apply for purposes of paragraph (1).'

Savings Provision

For provisions that nothing in amendment by sections 11812(b)(3) and 11813(b)(3) of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 29 of this title.

Election To Accelerate Credit Into 1990

Section 11407(c) of Pub. L. 101-508 provided that:

'(1) In general. - At the election of an individual, the credit determined under section 42 of the Internal Revenue Code of 1986 for the taxpayer's first taxable year ending on or after October 25, 1990, shall be 150 percent of the amount which would (but for this paragraph) be so allowable with respect to investments held by such individual on or before October 25, 1990.

'(2) Reduction in aggregate credit to reflect increased 1990 credit. - The aggregate credit allowable to any person under section 42 of such Code with respect to any investment for taxable years after the first taxable year referred to in paragraph (1) shall be reduced on a pro rata basis by the amount of the increased credit allowable by reason of paragraph (1) with respect to such first taxable year. The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods.

(3) Election. - The election under paragraph (1) shall be made at the time and in the manner prescribed by the Secretary of the Treasury or his delegate, and, once made, shall be irrevocable. In the case of a partnership, such election shall be made by the partnership.'

Exception To Time Period For Meeting Project Requirements In Order To Qualify As Low-Income Housing

Section 11701(a)(5)(B) of Pub. L. 101-508 provided that: 'In the case of a building to which the amendment made by subparagraph (A) (amending this section) does not apply, the period specified in section 42(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect before the amendment made by subparagraph (A)) shall not expire before the close of the taxable year following the taxable year in which the building is placed in service.'

State Housing Credit Ceiling For Calendar Year 1990

Section 7108(a)(2) of Pub. L. 101-239, which provided that in the case of calendar year 1990, section 42(h)(3)(C)(i) of the Internal Revenue Code of 1986 be applied by substituting '$.9375' for '$1.25', was repealed by Pub. L. 101-508, title XI, Sec. 11407(a)(2), (3), Nov. 5, 1990, 104 Stat. 1388-474, applicable to calendar years after 1989.

Transitional Rules

Section 252(f) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, Sec. 1002(l)(28)-(31), Nov. 10, 1988, 102 Stat. 3381, provided that:

'(1) Limitation to non-acrs buildings not to apply to certain buildings, etc. -

'(A) In general. - In the case of a building which is part of a project described in subparagraph (B) -

'(i) section 42(c)(2)(B) of the Internal Revenue Code of 1986 (as added by this section) shall not apply,

'(ii) such building shall be treated as not federally subsidized for purposes of section 42(b)(1)(A) of such Code,

'(iii) the eligible basis of such building shall be treated, for purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

'(iv) the amendments made by section 803 (enacting section 263A of this title, amending sections 48, 267, 312, 447, 464, and 471 of this title, and repealing sections 189, 278, and 280 of this title) shall not apply.

'(B) Project described. - A project is described in this subparagraph if -

'(i) an urban development action grant application with respect to such project was submitted on September 13, 1984,

'(ii) a zoning commission map amendment related to such project was granted on July 17, 1985, and

'(iii) the number assigned to such project by the Federal Housing Administration is 023-36602.

'(C) Additional units eligible for credit. - In the case of a building to which subparagraph (A) applies and which is part of a project which meets the requirements of subparagraph (D), for each low-income unit in such building which is occupied by individuals whose income is 30 percent or less of area median gross income, one additional unit (not otherwise a low-income unit) in such building shall be treated as a low-income unit for purposes of such section 42.

'(D) Project described. - A project is described in this subparagraph if -

'(i) rents charged for units in such project are restricted by State regulations,

'(ii) the annual cash flow of such project is restricted by State law,

'(iii) the project is located on land owned by or ground leased from a public housing authority,

'(iv) construction of such project begins on or before December 31, 1986, and units within such project are placed in service on or before June 1, 1990, and

'(v) for a 20-year period, 20 percent or more of the residential units in such project are occupied by individuals whose income is 50 percent or less of area median gross income.

'(E) Maximum additional credit. - The maximum present value of additional credits allowable under section 42 of such Code by reason of subparagraph (C) shall not exceed 25 percent of the eligible basis of the building.

'(2) Additional allocation of housing credit ceiling. -

'(A) In general. - There is hereby allocated to each housing credit agency described in subparagraph (B) an additional housing credit dollar amount determined in accordance with the following table:

'For calendar year:	The additional allocation is:
1987	$3,900,000
1988	$7,600,000
1989	$1,300,000.

'(B) Housing credit agencies described. - The housing credit agencies described in this subparagraph are:

'(i) A corporate governmental agency constituted as a public benefit corporation and established in 1971 under the provisions of Article XII of the Private Housing Finance Law of the State.

'(ii) A city department established on December 20, 1979, pursuant to chapter XVIII of a municipal code of such city for the purpose of supervising and coordinating the formation and execution of projects and programs affecting housing within such city.

'(iii) The State housing finance agency referred to in subparagraph (C), but only with respect to projects described in subparagraph (C).

'(C) Project described. - A project is described in this subparagraph if such project is a qualified low-income housing project which -

'(i) receives financing from a State housing finance agency from the proceeds of bonds issued pursuant to chapter 708 of the Acts of 1966 of such State pursuant to loan commitments from such agency made between May 8, 1984, and July 8, 1986, and

'(ii) is subject to subsidy commitments issued pursuant to a program established under chapter 574 of the Acts of 1983 of such State having award dates from such agency between May 31, 1984, and June 11, 1985.

'(D) Special rules. -

'(i) Any building -

'(I) which is allocated any housing credit dollar amount by a housing credit agency described in clause (iii) of subparagraph (B), and

'(II) which is placed in service after June 30, 1986, and before January 1, 1987,

shall be treated for purposes of the amendments made by this section as placed in service on January 1, 1987.

'(ii) Section 42(c)(2)(B) of the Internal Revenue Code of 1986 shall not apply to any building which is allocated any housing credit dollar amount by any agency described in subparagraph (B).

'(E) All units treated as low income units in certain cases. - In the case of any building -

'(i) which is allocated any housing credit dollar amount by any agency described in subparagraph (B), and

'(ii) which after the application of subparagraph (D)(ii) is a qualified low-income building at all times during any taxable year,

such building shall be treated as described in section 42(b)(1)(B) of such Code and having an applicable fraction for such year of 1. The preceding sentence shall apply to any building only to the extent of the portion of the additional housing credit dollar amount (allocated to such agency under subparagraph (A)) allocated to such building.

'(3) Certain projects placed in service before 1987. -

'(A) In general. - In the case of a building which is part of a project described in subparagraph (B) -

'(i) section 42(c)(2)(B) of such Code shall not apply,

'(ii) such building shall be treated as placed in service during the first calendar year after 1986 and before 1990 in which such building is a qualified low-income building (determined after the application of clause (i)), and

'(iii) for purposes of section 42(h) of such Code, such building shall be treated as having allocated to it a housing credit dollar amount equal to the dollar amount appearing in the clause of subparagraph (B) in which such building is described.

'(B) Project described. - A project is described in this subparagraph if the code number assigned to such project by the Farmers' Home Administration appears in the following table:

'The code number is:	The housing credit dollar amount is:
(i) 49284553664	$16,000
(ii) 4927742022446	$22,000
(iii) 49270742276087	$64,000
(iv) 490270742387293	$48,000
(v) 4927074218234	$32,000
(vi) 49270742274019	$36,000
(vii) 51460742345074	$53,000.

'(C) Determination of adjusted basis. - The adjusted basis of any building to which this paragraph applies for purposes of section 42 of such Code shall be its adjusted basis as of the

close of the taxable year ending before the first taxable year of the credit period for such building.

'(D) Certain rules to apply. - Rules similar to the rules of subparagraph (E) of paragraph (2) shall apply for purposes of this paragraph.

'(4) Definitions. - For purposes of this subsection, terms used in such subsection which are also used in section 42 of the Internal Revenue Code of 1986 (as added by this section) shall have the meanings given such terms by such section 42.

'(5) Transitional rule. - In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana -

'(A) the amendments made by this section (enacting this section and amending sections 38 and 55 of this title) shall not apply, and

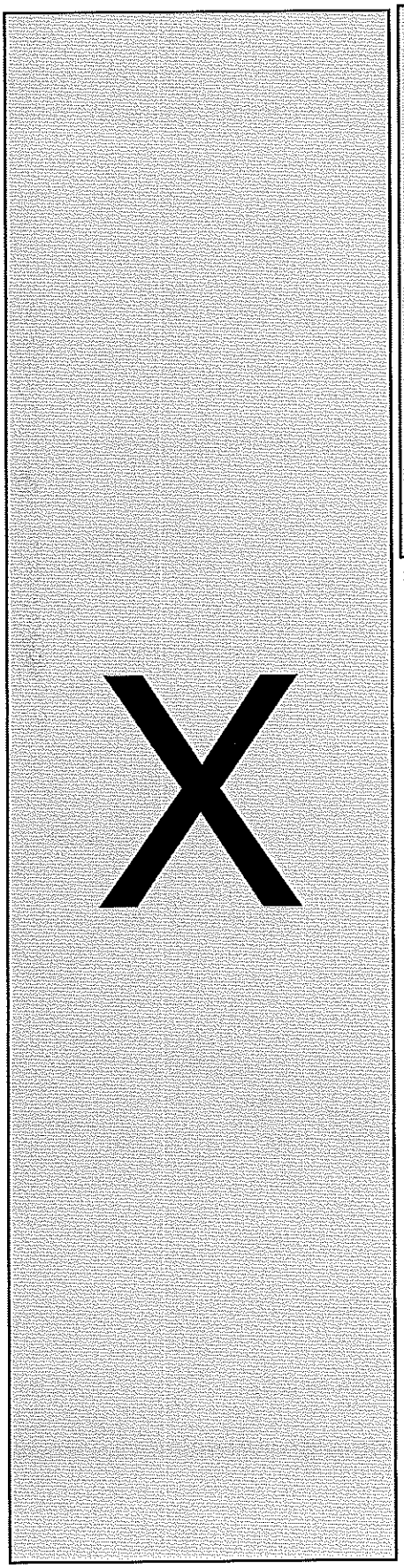
'(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase 'and before January 1, 1987'.

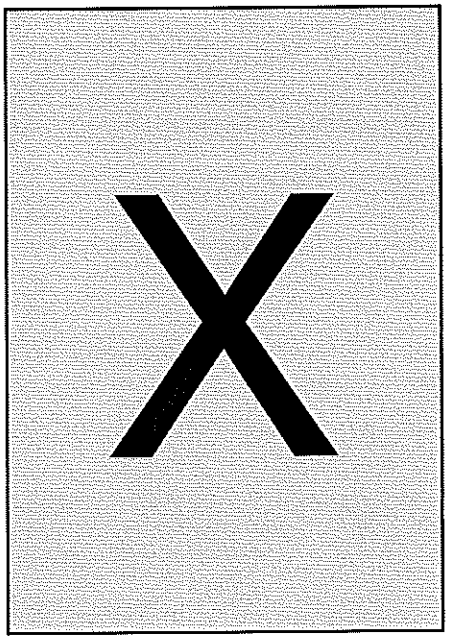
The number of units to which the preceding sentence applies shall not exceed 150.'

SECREF

Section Referred To In Other Sections

This section is referred to in sections 38, 39, 55, 469 of this title; title 42 sections 1437, 1485, 12745.





DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8859]

RIN 1545–AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit

AGENCY: Int rnal R v nu S rvic (IRS), Tr asury.

ACTION: Final r gulations.

SUMMARY: This docum nt contains final r gulations r garding th proc dur s for complianc monitoring by stat and local housing ag nci s (Ag nci s) with th r quir m nts of th low-incom housing cr dit; th r quir m nts for making carryov r allocations; th rul s for Ag nci s' corr ction of administrativ rrors or omissions; and th ind p nd nt v rification of information on sourc s and us s of funds submitt d by taxpay rs to Ag nci s. Th s final r gulations aff ct own rs of low-incom housing proj cts who claim th cr dit and th Ag nci s who administ r th cr dit.

DATES: *Eff ctiv Dat s:* Th s r gulations ar ff ctiv January 1, 2001, xc pt that th am ndm nts mad to §§ 1.42–5(c)(5) and ( )(3)(i), and 1.42–13 ar ff ctiv January 14, 2000, and th am ndm nt mad to § 1.42–6(d)(4)(ii) is ff ctiv January 1, 2000.

Applicability Dat s: For dat s of applicability of th am ndm nts to § 1.42–5, s § 1.42–5(h). For dat of applicability of th am ndm nt mad to § 1.42–6, s § 1.42–12(c). For dat of applicability of th am ndm nts mad to § 1.42–13, s § 1.42–13(d). For dat of applicability of § 1.42–17, s § 1.42–17(b).

FOR FURTHER INFORMATION CONTACT: Paul Handl man, (202) 622–3040 (not a toll-fr numb r).

SUPPLEMENTARY INFORMATION:

Pap rwork R duction Act

Th coll ctions of information contain d in th s final r gulations hav b n r vi w d and approv d by th Offic of Manag m nt and Budg t in accordanc with th Pap rwork R duction Act of 1995 (44 U.S.C. 3507) und r control numb r 1545–1357. R spons s to th s coll ctions of information ar mandatory.

An ag ncy may not conduct or sponsor, and a p rson is not r quir d to r spond to, a coll ction of information unl ss th coll ction of information displays a valid control numb r.

For § 1.42–5, th stimat d annual burd n p r r spond nt vari s from .5 hour to 3 hours for taxpay rs and 250 to 5,000 hours for Ag nci s, with an stimat d av rag of 1 hour for taxpay rs and 1,500 hours for Ag nci s. For § 1.42–13, th stimat d annual burd n p r r spond nt vari s from .5 hour to 10 hours for taxpay rs and Ag nci s, with an stimat d av rag of 3.5 hours for taxpay rs and 3 hours for Ag nci s. For § 1.42–17, th stimat d annual burd n p r r spond nt vari s from .5 hour to 2 hours for taxpay rs and .5 hour to 5 hours for Ag nci s, with an stimat d av rag of 1 hour for taxpay rs and 2 hours for Ag nci s.

Comm nts conc rning th accuracy of th s burd n stimat s and sugg stions for r ducing th s burd ns should b s nt to th Int rnal R v nu S rvic , Attn: IRS R ports Cl aranc Offic r, OP:FS:FP, Washington, DC 20224, and to th Offic of Manag m nt and Budg t, Attn: D sk Offic r for th D partm nt of th Tr asury, Offic of Information and R gulatory Affairs, Washington, DC 20503.

Books or r cords r lating to this coll ction of information must b r tain d as long as th ir cont nts may b com mat rial in th administration of any int rnal r v nu law. G n rally, tax r turns and tax r turn information ar confid ntial, as r quir d by 26 U.S.C. 6103.

Background

On January 8, 1999, th IRS publish d propos d r gulations (REG–114664–97) in th **F d ral R gist r** (64 FR 1143) inviting comm nts und r s ction 42. A

public h aring was h ld May 27, 1999. Num rous comm nts hav b n r c iv d. Aft r consid ration of all th comm nts, th propos d r gulations ar adopt d as r vis d by this Tr asury D cision.

Public Comm nts

A. Complianc Monitoring

1. Insp ction R quir m nt for N w Buildings

Th propos d r gulations r quir that, by th nd of th cal ndar y ar following th y ar th last building in a proj ct is plac d in s rvic , th Ag ncy conduct on-sit insp ctions of th proj cts and r vi w th low-incom c rtification, th docum ntation supporting such c rtification, and th r nt r cord for ach t nant in th proj ct. Most comm ntators vi w th r quir m nt for r vi wing all t nant r cords for all buildings in a proj ct as unn c ssary and burd nsom . Most comm ntators sugg st limiting insp ctions for n w buildings to 20 p rc nt of th proj ct's low-incom units.

Comm ntators also sugg st xt nding th tim limit for insp cting n w buildings to th nd of th cal ndar y ar following th first y ar of th cr dit p riod or at l ast until a r asonabl tim aft r th Ag ncy issu s Form 8609, "Low-Incom Housing Cr dit Allocation C rtification." This add d fl xibility would allow th Ag ncy to combin a physical insp ction with a fil r vi w of th first y ar of th cr dit p riod.

In r spons to th comm nts, th final r gulations r duc th insp ction burd n for n w buildings by r quiring th Ag ncy to conduct on-sit insp ctions of all n w buildings in th proj ct and, for at l ast 20 p rc nt of th proj ct's low-incom units, to insp ct th units and r vi w th low-incom c rtifications, th docum ntation supporting th c rtifications, and th r nt r cords for th t nants in thos units. To allow th Ag ncy suffici nt tim to r vi w th t nant fil s for th first y ar of th cr dit p riod, th final r gulations xt nd th tim limit for insp cting n w buildings to th nd of th s cond cal ndar y ar following th y ar th last building in th proj ct is plac d in s rvic .

2. Thr -y ar Insp ction R quir m nt

Th propos d r gulations r quir that, at l ast onc v ry 3 y ars, ach Ag ncy conduct on-sit insp ctions of all buildings in ach low-incom housing proj ct and, for ach t nant in at l ast 20 p rc nt of th proj ct's low-incom units s l ct d by th Ag ncy, r vi w th low-incom c rtification, th docum ntation supporting such c rtification, and th r nt r cord.

Most comm ntators agr with r quiring physical insp ctions of th buildings at l ast onc v ry 3 y ars. How v r, comm ntators r comm nd r vi wing t nant incom and r nt r cords onc v ry 5 y ars, which is on of th options und r th curr nt complianc monitoring r gulations (s § 1.42–5(c)(2)(ii)(B) r quiring an Ag ncy to r vi w t nant fil s for 20 p rc nt of th low-incom housing proj cts ach y ar). Comm ntators also r comm nd r vi wing t nant fil s ith r on-sit or at oth r locations, including d sk audits.

Although th physical insp ction and fil r vi w r quir m nts for n w buildings ar r lax d in th final r gulations, th final r gulations r tain th 3-y ar insp ction cycl for xisting buildings. Th final r gulations do not s parat th physical insp ction and fil r vi w cycl s (v ry 3 y ars for physical insp ctions and v ry 5 y ars for fil r vi ws) as sugg st d by comm ntators b caus it is administrativ ly compl t to do both during th sam y ar. Th t nant incom and r nt r strictions in s ction 42(g) ar qually important as th habitability standards for a low-incom unit in s ction 42(i)(3)(B)(ii). Th final r gulations adopt th sugg stion that th fil r vi w may b don wh r v r th t nant fil s ar maintain d.

3. H alth, Saf ty, and Building Cod Insp ctions

Th propos d r gulations r quir th Ag ncy to d t rmin wh th r th proj ct is suitabl for occupancy, taking into account local h alth, saf ty, and building cod s.

Many comm ntators obj ct to this r quir m nt as too costly and unadminist rabl b caus building cod s vary consid rably within stat s. Comm ntators also ask d for guid lin s as to what constitut s an "insp ction." Som comm ntators propos d fining an insp ction as looking at s l ct d units in th building and common ar as for visibl probl ms or d f cts without applying th local h alth, saf ty, and building cod s standards. On comm ntator sugg sts insp ctions bas d on a complaint from th local jurisdiction or from a t nant. Som comm ntators sugg st using a uniform physical standard such as th uniform physical condition standards for public housing stablish d by th D partm nt of Housing and Urban D v lopm nt (HUD) in 24 CFR 5.703.

S ction 42(i)(3)(B)(i) xclud s from th d finition of a "low-incom unit" a unit that is not suitabl for occupancy. Und r s ction 42(i)(3)(B)(ii), suitability of a unit for occupancy shall b d t rmin d und r r gulations pr scrib d by th S cr tary taking into account local h alth, saf ty, and building cod s. R cognizing that th s cod s vary consid rably within stat s, th final r gulations r quir an Ag ncy to d t rmin wh th r a low-incom housing proj ct satisfi s th s cod s, or satisfi s th HUD uniform physical condition standards. Th HUD standards ar int nd d to nsur that housing is d c nt, saf , sanitary, and in good r pair. Though it would b appropriat that an Ag ncy us HUD's insp ction protocol und r 24 CFR 5.705, th final r gulations do not mandat us of HUD's insp ction protocol b caus to do so could incr as costs to th Ag nci s as w ll as limit th ir latitud in applying standards consist nt with th ir own op rating proc dur s and practic s. Th final r gulations xc pt a building from th insp ction r quir m nt if th building is financ d by th Rural Housing S rvic (RHS) und r th s ction 515 program, th RHS insp cts th building (und r 7 CFR part 1930(c)), and th RHS and Ag ncy nt r into a m morandum of und rstanding, or oth r similar arrang m nt, und r which th RHS agr s to notify th Ag ncy of th insp ction r sults. Irr sp ctiv of th physical insp ction standard s l ct d by th Ag ncy, a low-incom housing proj ct und r s ction 42 must continu to satisfy local h alth, saf ty, and building cod s.

Th propos d r gulations limit an Ag ncy's d l gation of th physical insp ction of a proj ct to only a stat or local gov rnm nt unit r sponsibl for making building cod insp ctions. Comm ntators sugg st xpanding th d l gation of insp ctions to prof ssional firms. Th final r gulations r mov th d l gation limitation and Ag nci s may d l gat th physical insp ction r quir m nt to stat or local gov rnm ntal ag nci s, HUD, or privat contractors.

4. Local R ports of Building Cod Violations

Th propos d r gulations r quir th own r of a low-incom housing proj ct to c rtify that for th pr c ding 12-month p riod th stat or local gov rnm nt unit r sponsibl for making building cod insp ctions did not issu a r port of a violation for th proj ct. If th gov rnm ntal unit issu d a r port of a violation, th own r is r quir d to attach a copy of th r port of th violation to th annual c rtification submitt d to th Ag ncy.

A comm ntator not d that th numb r of violations attach d to th annual own r c rtification would b consid rabl b caus v n th high st

quality r ntal housing op rations do not hav an insp ction without a r port or notic of som violation. Two comm ntators sugg st attaching r ports only for violations that hav not b n corr ct d prior to filing th annual own r c rtification or r quiring that own rs only attach r ports for "major" violations. Th comm ntators sugg st d fining major violations as violations not corr ct d within 90 days of th notic of violation or violations wh r th cost to comply xc ds $2,500. A comm ntator sugg sts that Ag nci s b allow d to distinguish b tw n minor t chnical violations and s rious violations (i. ., lack of h at or hot wat r, hazardous conditions, and s curity) in r porting noncomplianc .

Though a minor violation will not l ad to th disallowanc or r captur of s ction 42 cr dits, a s ri s of minor violations may b th quival nt of a major violation r sulting in disallowanc or r captur of cr dits. D t rmining th diff r nc b tw n a major and minor violation is subj ctiv . Th final r gulations do not xclud minor violations from th r porting and r cordk ping r quir m nt. How v r, to r duc th insp ction violation pap rwork, th final r gulations r quir that th own r must ith r attach a stat m nt summarizing th violations or a copy of ach violation r port to th annual own r c rtification submitt d to th Ag ncy. Th own r must stat on th c rtification wh th r th violation has b n corr ct d. In addition, th final r gulations r quir that th own r r tain th original violation r port for th Ag ncy's physical insp ction. R t ntion of th original violation r port is not r quir d onc th Ag ncy r vi ws th violation and compl t s its insp ction, unl ss th violation r mains uncorr ct d.

5. Corr ction of Noncomplianc or Failur to C rtify

Th final r gulations adopt comm ntators' sugg stion to limit to a 3-y ar p riod aft r th nd of th corr ction p riod in § 1.42–5( )(4) th r quir m nt that Ag nci s fil Form 8823, "Low-Incom Housing Cr dit Ag nci s R port of Noncomplianc ," with th IRS r porting th corr ction of th noncomplianc or failur to c rtify.

6. Complianc Monitoring Eff ctiv Dat s

Comm ntators sugg st an ff ctiv dat of at l ast on y ar aft r th final r gulations ar publish d in th **F d ral R gist r.** Comm ntators also r comm nd on-sit insp ctions apply only to n w buildings allocat d s ction 42 cr dits aft r th ff ctiv dat of th final r gulations.

B caus th am ndm nts to th complianc monitoring r gulations will r quir am ndm nts to qualifi d allocation plans, th final r gulations r lating to complianc g n rally contain a January 1, 2001, ff ctiv dat . Thus, th r quir m nts to attach local h alth, saf ty, or building cod violations to th annual own r c rtification and to insp ct buildings and r vi w t nant fil s for xisting proj cts ar ff ctiv January 1, 2001. Th insp ction r quir m nt and t nant fil r vi w for n w buildings is ff ctiv for buildings plac d in s rvic on or aft r January 1, 2001.

7. S ction 8 and F d ral Civil Rights Laws

Two comm ntators stat that insuffici nt controls ar in plac to nsur that low-incom housing proj cts adh r to th r quir m nt in s ction 42(h)(6)(B)(iv) of nondiscrimination against S ction 8 vouch r or c rtificat hold rs. Th comm ntators sugg st that th IRS could h lp comp nsat for lack of controls by working with HUD to nsur that S ction 8 vouch r or c rtificat hold rs ar awar of, and hav acc ss to, low-incom housing proj cts. Th comm ntators also sugg st that Ag nci s provid r gional HUD offic s a list of low-incom housing proj cts in that stat , with information that would b h lpful for prosp ctiv t nants. On comm ntator sugg sts that th prohibition on discrimination bas d on S ction 8 status b clarifi d to xclud polici s that bar S ction 8 t nants but hav no substantial busin ss justification. For xampl , low-incom housing proj cts should not b p rmitt d to xclud S ction 8 vouch r or c rtificat hold rs through a rul that r quir s v ry applicant to hav incom qual to at l ast thr tim s th total r nt.

Th comm ntators also sugg st that th Ag nci s should b r quir d to d v lop a plan for ducating applicants and own rs of proj cts of th prohibition against discrimination on th basis of S ction 8 vouch r or c rtificat status. Th y r comm nd that th Ag nci s should b r quir d to hav a proc dur for acc pting and proc ssing complaints about discrimination against S ction 8 vouch r or c rtificat hold rs. Th y also r comm nd that IRS and HUD should work tog th r to study th circumstanc s und r which S ction 8 vouch r or c rtificat hold rs ar , or ar not, acc ssing proj cts.

S ction 42(h)(6)(A) provid s that no cr dit shall b allow d by r ason of s ction 42 with r sp ct to any building for th taxabl y ar unl ss an xt nd d low-incom housing commitm nt is in ff ct as of th nd of such taxabl y ar. S ction 42(h)(6)(B)(iv) d fin s th t rm " xt nd d low-incom housing commitm nt" to includ any agr m nt b tw n th taxpay r and th housing cr dit ag ncy that prohibits th r fusal to l as to a hold r of a vouch r or c rtificat of ligibility und r s ction 8 of th Unit d Stat s Housing Act of 1937 b caus of th status of th prosp ctiv t nant as such a hold r. To h lp monitor complianc with s ction 42(h)(6)(B)(iv), th final r gulations am nd th annual own r c rtification r lating to th xt nd d low-incom housing commitm nt und r § 1.42–5(c)(1)(xi) to r quir own rs to c rtify that th own r has not r fus d to l as a unit in th proj ct to a S ction 8 applicant b caus th applicant holds a S ction 8 vouch r or c rtificat .

Th IRS has inform d HUD of th comm nts r c iv d about pr v nting discrimination bas d on S ction 8 status. Ag nci s should provid HUD with publicly availabl information on s ction 42 low-incom housing proj cts if HUD r qu sts it.

A comm ntator also sugg sts that th complianc monitoring r gulations b am nd d to acknowl dg th authority of Titl VIII of th 1968 Civil Rights Act, as w ll as HUD's Titl VIII r gulations; sp cify th civil rights obligations of th Ag nci s; and sp cify what d v lop rs and own rs of proj cts must do to satisfy th ir civil rights obligations.

To monitor for complianc with th Fair Housing Act, th final r gulations am nd th annual own r c rtification r lating to th g n ral public us r quir m nt in § 1.42–5(c)(1)(v) to r quir own rs to c rtify that no finding of discrimination und r th Fair Housing Act has occurr d for th proj ct (a finding of discrimination includ s an adv rs final d cision by HUD, an adv rs final d cision by a substantially quival nt stat or local fair housing ag ncy, or an adv rs judgm nt from a F d ral court).

B. Sourc s and Us s of Funds

S ction 42(m)(2)(A) r quir s Ag nci s to limit th housing cr dit dollar amount allocat d to a proj ct to only th amount n c ssary for th financial f asibility of a proj ct and its viability as a qualifi d low-incom proj ct through th cr dit p riod. Th propos d r gulations r quir an Ag ncy to valuat th housing cr dit dollar amount at four tim s: (1) at application for th housing cr dit dollar amount, (2) th allocation of th housing cr dit dollar amount, (3) th dat th building

is plac d in s rvic , and (4) aft r th building is plac d in s rvic , but b for th Ag ncy issu s th Form 8609.

Comm ntators r comm nd limination of th valuation at th plac d-in-s rvic dat . In practic , Ag nci s curr ntly valuat th cr dit amount at th thr oth r tim s. Th final r gulations adopt th r comm ndation by d l ting th fourth tim r quir m nt and clarifying that th plac d-in-s rvic valuation may occur not lat r than th dat th Ag ncy issu s th Form 8609.

Comm ntators ar conc rn d that th opinion by a c rtifi d public accountant, bas d upon th accountant's audit or xamination, on th financial d t rminations and c rtifications r quir d in th propos d r gulations, could hav significant cost implications, particularly for small r d v lop rs. Comm ntators sugg st limiting th r quir m nt to proj cts with 25 or mor units, or proj cts with total d v lopm nt costs of $5 million or mor .

Th third-party validation on financial information was r comm nd d in th r port by th G n ral Accounting Offic (GAO), "Tax Cr dits: Opportuniti s to Improv Ov rsight of th Low-Incom Housing Program," (GAO/GGD/RCED–97–55), dat d March 28, 1997. Th GAO r port stat s on pag 93 that an accounting firm with a tax cr dit sp ciality would charg in th $5,000 to $7,500 rang p r ngag m nt for tax cr dit c rtifications (opinion on total costs, ligibl basis, and tax cr dit amount) pr par d on th basis of an audit don in accordanc with AICPA audit standards v n for proj cts costing upwards of $5 million to $10 million. As a p rc ntag of d v lopm nt costs, th CPA tax cr dit c rtifications r pr s nt a minimal cost for validating financial information. How v r, in r cognition that th cost may b burd nsom for small r d v lop rs, th final r gulations limit th r quir m nt for an audit d sch dul of costs for proj cts with mor than 10 units.

Two comm ntators w r conc rn d that th m aning of th t rm "financial d t rminations and c rtifications" is uncl ar. A CPA would not b abl to valuat what n ds to b audit d and wh th r th r ar r l vant and r liabl crit ria against which th information can b valuat d. To conduct an audit or att station ngag m nt, CPAs r quir that th subj ct matt r b d fin d and that such subj ct matt r b capabl of valuation against r asonabl crit ria. R asonabl crit ria ar ss ntial so that CPAs using th sam crit ria will b abl to arriv at similar conclusions.

Anoth r conc rn xpr ss d by comm ntators involv d unc rtainty as to wh th r th CPA is b ing ask d to r port on financial information that is only historical or wh th r th CPA is also b ing ask d to xamin prosp ctiv financial information. CPAs can compil or xamin and r port on c rtain typ s of prosp ctiv financial information. How v r, such ngag m nts g n rally ar mor costly than audits of historical information b caus of minimum pr s ntation guid lin s r quir d by prof ssional standards as w ll as incr as d risk associat d with futur -ori nt d information. Th comm ntators b li v that if an Ag ncy w r to r quir CPAs to b associat d with prosp ctiv financial information, th r lat d costs to th taxpay r may far xc d any p rc iv d b n fits to th Ag ncy. Accordingly, th final r gulations hav b n r vis d to sp cify that th CPA's opinion only r lat s to historical proj ct costs.

C. Corr ction of Administrativ Errors and Omissions

Comm ntators r comm nd filing th corr ct d allocation docum nt with th curr nt y ar's Form 8610, "Annual Low-Incom Housing Cr dit Ag nci s R port," inst ad of am nding th Form 8610 for th y ar th allocation was mad . B caus th administrativ rrors cov r d by th automatic approval provision will not hav an ff ct on th total amount of cr dit th Ag ncy allocat d to th building(s) or proj ct, comm ntators vi w an am nd d Form 8610 as unn c ssary. Ag ncy r cordk ping would b simplifi d if all corr ct d allocation docum nts could b submitt d with th curr nt y ar's Form 8610. Th final r gulations adopt this r comm ndation.

Sp cial Analys s

It has b n d t rmin d that this Tr asury d cision is not a significant r gulatory action as d fin d in Ex cutiv Ord r 12866. Th r for , a r gulatory ass ssm nt is not r quir d. It also has b n d t rmin d that s ction 553(b) of th Administrativ Proc dur Act (5 U.S.C. chapt r 5) do s not apply to th s r gulations. It is h r by c rtifi d that th coll ctions of information in th s r gulations will not hav a significant conomic impact on a substantial numb r of small ntiti s. This c rtification is bas d upon th fact that th burd n on taxpay rs is minimal and th burd n on small ntity Ag nci s is not significant. Accordingly, a R gulatory Fl xibility Analysis und r th R gulatory Fl xibility Act is not r quir d. Pursuant to s ction 7805(f) of th Int rnal R v nu Cod , th notic of propos d rul making pr c ding th s r gulations was submitt d to th Chi f Couns l for Advocacy of th Small Busin ss Administration for comm nt on its impact on small busin ss.

Drafting information. Th principal author of th s r gulations is Paul F. Handl man, Offic of th Assistant Chi f Couns l (Passthroughs and Sp cial Industri s), IRS. How v r, oth r p rsonn l from th IRS and Tr asury D partm nt participat d in th ir d v lopm nt.

List of Subj cts

26 CFR Part 1

Incom tax s, R porting and r cordk ping r quir m nts.

26 CFR Part 602

R porting and r cordk ping r quir m nts.

Adoption of Am ndm nts to th R gulations

Accordingly, 26 CFR parts 1 and 602 ar am nd d as follows:

PART 1—INCOME TAXES

Paragraph 1. Th authority citation for part 1 is am nd d by adding an ntry in num rical ord r to r ad in part as follows:

Authority: 26 U.S.C. 7805 * * *

S ction 1.42–17 also issu d und r 26 U.S.C. 42(n); * * *

Par. 2. S ction 1.42–5 is am nd d by:

1. R moving th word "R v nu " in paragraph (b)(1)(iv) and adding "Omnibus Budg t" in its plac .

2. Adding paragraph (b)(3).

3. R vising paragraphs (c)(1)(v), (c)(1)(vi), (c)(1)(xi), (c)(2)(ii), and (c)(2)(iii).

4. R moving th word "proj ct" in paragraph (c)(1)(x) and adding "building" in its plac .

5. R moving th word "and" at th nd of paragraph (c)(1)(x).

6. Adding paragraph (c)(1)(xii).

7. R moving th languag "paragraph (c)(2)(ii)(A), (B), and (C) of this s ction" from th first s nt nc in paragraph (c)(4)(i) and adding "paragraph (c)(2)(ii) of this s ction" in its plac .

8. R moving th languag "Farm rs Hom Administration (FmHA)" in th first s nt nc in paragraph (c)(4)(i) and adding "Rural Housing S rvic (RHS), form rly known as Farm rs Hom Administration," in its plac .

9. R moving th languag "FmHA" in paragraph (c)(4)(ii) and adding "RHS" in its plac in ach plac it app ars.

10. R moving th languag "An Ag ncy choos s th r vi w r quir m nt of paragraph (c)(2)(ii)(A) of this s ction and som of th buildings s l ct d for r vi w ar " from th first s nt nc in

th xampl in paragraph (c)(4)(iii) and adding "An Ag ncy s l cts for r vi w" in its plac .

11. R moving th languag "FmHA" in paragraph (c)(4)(iii) *Exampl* and adding "RHS" in its plac in ach plac it app ars.

12. Adding paragraph (c)(5).

13. R vising paragraph (d).

14. R moving th languag "(c)(2)(ii)(A), (B), or (C) of this s ction (which v r is applicabl)" from paragraph ( )(2) and adding th languag "(c)(2)(ii) of this s ction" in its plac .

15. Adding a s nt nc at th nd of paragraph ( )(3)(i).

16. R moving th languag "paragraph ( )(3) of this s ction" in th third s nt nc in paragraph (f)(1)(i) and adding "paragraphs (c)(5) and ( )(3) of this s ction" in its plac .

17. Adding thr s nt nc s at th nd of paragraph (h).

Th r visions and additions r ad as follows:

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

* * * * *

(b) * * *

(3) *Insp ction r cord r t ntion provision.* Und r th insp ction r cord r t ntion provision, th own r of a low-incom housing proj ct must b r quir d to r tain th original local h alth, saf ty, or building cod violation r ports or notic s that w r issu d by th Stat or local gov rnm nt unit (as d scrib d in paragraph (c)(1)(vi) of this s ction) for th Ag ncy's insp ction und r paragraph (d) of this s ction. R t ntion of th original violation r ports or notic s is not r quir d onc th Ag ncy r vi ws th violation r ports or notic s and compl t s its insp ction, unl ss th violation r mains uncorr ct d.

(c) * * * (1) * * *

(v) All units in th proj ct w r for us by th g n ral public (as d fin d in § 1.42–9), including th r quir m nt that no finding of discrimination und r th Fair Housing Act, 42 U.S.C. 3601–3619, occurr d for th proj ct. A finding of discrimination includ s an adv rs final d cision by th S cr tary of th D partm nt of Housing and Urban D v lopm nt (HUD), 24 CFR 180.680, an adv rs final d cision by a substantially quival nt stat or local fair housing ag ncy, 42 U.S.C. 3616a(a)(1), or an adv rs judgm nt from a f d ral court;

(vi) Th buildings and low-incom units in th proj ct w r suitabl for occupancy, taking into account local h alth, saf ty, and building cod s (or oth r habitability standards), and th Stat or local gov rnm nt unit r sponsibl for making local h alth, saf ty, or building cod insp ctions did not issu a violation r port for any building or low-incom unit in th proj ct. If a violation r port or notic was issu d by th gov rnm ntal unit, th own r must attach a stat m nt summarizing th violation r port or notic or a copy of th violation r port or notic to th annual c rtification submitt d to th Ag ncy und r paragraph (c)(1) of this s ction. In addition, th own r must stat wh th r th violation has b n corr ct d;

* * * * *

(xi) An xt nd d low-incom housing commitm nt as d scrib d in s ction 42(h)(6) was in ff ct (for buildings subj ct to s ction 7108(c)(1) of th Omnibus Budg t R conciliation Act of 1989, 103 Stat. 2106, 2308–2311), including th r quir m nt und r s ction 42(h)(6)(B)(iv) that an own r cannot r fus to l as a unit in th proj ct to an applicant b caus th applicant holds a vouch r or c rtificat of ligibility und r s ction 8 of th Unit d Stat s Housing Act of 1937, 42 U.S.C. 1437s (for buildings subj ct to s ction 13142(b)(4) of th Omnibus Budg t R conciliation Act of 1993, 107 Stat. 312, 438–439); and

(xii) All low-incom units in th proj ct w r us d on a nontransi nt basis (xc pt for transitional housing for th hom l ss provid d und r s ction 42(i)(3)(B)(iii) or singl -room-occupancy units r nt d on a month-by-month basis und r s ction 42(i)(3)(B)(iv)).

(2) * * *

(ii) R quir that with r sp ct to ach low-incom housing proj ct—

(A) Th Ag ncy must conduct on-sit insp ctions of all buildings in th proj ct by th nd of th s cond cal ndar y ar following th y ar th last building in th proj ct is plac d in s rvic and, for at l ast 20 p rc nt of th proj ct's low-incom units, insp ct th units and r vi w th low-incom c rtifications, th docum ntation supporting th c rtifications, and th r nt r cords for th t nants in thos units; and

(B) At l ast onc v ry 3 y ars, th Ag ncy must conduct on-sit insp ctions of all buildings in th proj ct and, for at l ast 20 p rc nt of th proj ct's low-incom units, insp ct th units and r vi w th low-incom c rtifications, th docum ntation supporting th c rtifications, and th r nt r cords for th t nants in thos units; and

(iii) R quir that th Ag ncy randomly s l ct which low-incom units and t nant r cords ar to b insp ct d and r vi w d by th Ag ncy. Th r vi w of t nant r cords may b und rtak n wh r v r th own r maintains or stor s th r cords (ith r on-sit or off-sit). Th units and t nant r cords to b insp ct d and r vi w d must b chos n in a mann r that will not giv own rs of low-incom housing proj cts advanc notic that a unit and t nant r cords for a particular y ar will or will not b insp ct d and r vi w d. How v r, an Ag ncy may giv an own r r asonabl notic that an insp ction of th building and low-incom units or t nant r cord r vi w will occur so that th own r may notify t nants of th insp ction or ass mbl t nant r cords for r vi w (for xampl , 30 days notic of insp ction or r vi w).

* * * * *

(5) *Ag ncy r ports of complianc monitoring activiti s.* Th Ag ncy must r port its complianc monitoring activiti s annually on Form 8610, "Annual Low-Incom Housing Cr dit Ag nci s R port."

(d) *Insp ction provision*—(1) *In g n ral.* Und r th insp ction provision, th Ag ncy must hav th right to p rform an on-sit insp ction of any low-incom housing proj ct at l ast through th nd of th complianc p riod of th buildings in th proj ct. Th insp ction provision of this paragraph (d) is a s parat r quir m nt from any t nant fil r vi w und r paragraph (c)(2)(ii) of this s ction.

(2) *Insp ction standard.* For th on-sit insp ctions of buildings and low-incom units r quir d by paragraph (c)(2)(ii) of this s ction, th Ag ncy must r vi w any local h alth, saf ty, or building cod violations r ports or notic s r tain d by th own r und r paragraph (b)(3) of this s ction and must d t rmin —

(i) Wh th r th buildings and units ar suitabl for occupancy, taking into account local h alth, saf ty, and building cod s (or oth r habitability standards); or

(ii) Wh th r th buildings and units satisfy, as d t rmin d by th Ag ncy, th uniform physical condition standards for public housing stablish d by HUD (24 CFR 5.703). Th HUD physical condition standards do not sup rs d or pr mpt local h alth, saf ty, and building cod s. A low-incom housing proj ct und r s ction 42 must continu to satisfy th s cod s and, if th Ag ncy b com s awar of any violation of th s cod s, th Ag ncy must r port th violation to th S rvic . How v r, provid d th Ag ncy d t rmin s by insp ction that th HUD standards ar m t, th Ag ncy is not r quir d und r this paragraph (d)(2)(ii)

to d t rmin by insp ction wh th r th proj ct m ts local h alth, saf ty, and building cod s.

(3) *Exc ption from insp ction provision.* An Ag ncy is not r quir d to insp ct a building und r this paragraph (d) if th building is financ d by th RHS und r th s ction 515 program, th RHS insp cts th building (und r 7 CFR part 1930), and th RHS and Ag ncy nt r into a m morandum of und rstanding, or oth r similar arrang m nt, und r which th RHS agr s to notify th Ag ncy of th insp ction r sults.

(4) *D l gation.* An Ag ncy may d l gat insp ction und r this paragraph (d) to an Authoriz d D l gat r tain d und r paragraph (f) of this s ction. Such Authoriz d D l gat , which may includ HUD or a HUD-approv d insp ctor, must notify th Ag ncy of th insp ction r sults.

( ) * * *

(3) * * *

(i) * * * If th noncomplianc or failur to c rtify is corr ct d within 3 y ars aft r th nd of th corr ction p riod, th Ag ncy is r quir d to fil Form 8823 with th S rvic r porting th corr ction of th noncomplianc or failur to c rtify.

* * * * *

(h) * * * In addition, th r quir m nts in paragraphs (b)(3) and (c)(1)(v), (vi), and (xi) of this s ction (involving r cordk ping and annual own r c rtifications) and paragraphs (c)(2)(ii)(B), (c)(2)(iii), and (d) of this s ction (involving t nant fil r vi ws and physical insp ctions of xisting proj cts, and th physical insp ction standard) ar applicabl January 1, 2001. Th r quir m nt in paragraph (c)(2)(ii)(A) of this s ction (involving t nant fil r vi ws and physical insp ctions of n w proj cts) is applicabl for buildings plac d in s rvic on or aft r January 1, 2001. Th r quir m nts in paragraph (c)(5) of this s ction (involving Ag ncy r porting of complianc monitoring activiti s to th S rvic) and paragraph ( )(3)(i) of this s ction (involving Ag ncy r porting of corr ct d noncomplianc or failur to c rtify within 3 y ars aft r th nd of th corr ction p riod) ar applicabl January 14, 2000.

Par. 3. S ction 1.42–6 is am nd d by:

1. In paragraph (c)(3), s cond s nt nc , r mov th languag "Annual Low-Incom Housing Cr dit Ag nci s R port" and add th languag "'Annual Low-Incom Housing Cr dit Ag nci s R port'" in its plac .

2. In paragraph (d)(1), first s nt nc , r mov th languag "Low-Incom Housing Cr dit Allocation C rtification," and add th languag "'Low-Incom Housing Cr dit Allocation C rtification,'" in its plac .

3. R vising th first s nt nc in paragraph (d)(4)(ii).

§ 1.42–6 Buildings qualifying for carryover allocations.

* * * * *

(d) * * *

(4) * * *

(ii) *Ag ncy.* Th Ag ncy must r tain th original carryov r allocation docum nt mad und r paragraph (d)(2) of this s ction and fil Sch dul A (Form 8610), "Carryov r Allocation of th Low-Incom Housing Cr dit," with th Ag ncy's Form 8610 for th y ar th allocation is mad . * * *

* * * * *

Par. 4. S ction 1.42–11 is am nd d by r vising th last s nt nc in paragraph (b)(3)(ii)(A) to r ad as follows:

§ 1.42–11 Provision of services.

* * * * *

(b) * * *

(3) * * *

(ii) * * * (A) * * * For a building d scrib d in s ction 42(i)(3)(B)(iii) (r lating to transitional housing for th hom l ss) or s ction 42(i)(3)(B)(iv) (r lating to singl -room occupancy), a supportiv s rvic includ s any s rvic provid d to assist t nants in locating and r taining p rman nt housing.

* * * * *

Par. 5. S ction 1.42–12 is am nd d by adding paragraph (c) to r ad as follows:

§ 1.42–12 Effective dates and transitional rules.

* * * * *

(c) *Carryov r allocations.* Th rul s t forth in § 1.42–6(d)(4)(ii) r lating to th r quir m nt that stat and local housing ag nci s fil Sch dul A (Form 8610), "Carryov r Allocation of th Low-Incom Housing Cr dit," is applicabl for carryov r allocations mad aft r D c mb r 31, 1999.

Par. 6. S ction 1.42–13 is am nd d by:

1. R vising th introductory t xt of paragraph (b)(3)(iii).

2. Adding paragraphs (b)(3)(vi), (b)(3)(vii), and (b)(3)(viii).

3. Adding a s nt nc at th nd of paragraph (d).

Th r visions and additions r ad as follows:

§ 1.42–13 Rules necessary and appropriate; housing credit agencies' correction of administrative errors and omissions.

* * * * *

(b) * * *

(3) * * *

(iii) *S cr tary's prior approval r quir d.* Exc pt as provid d in paragraph (b)(3)(vi) of this s ction, an Ag ncy must obtain th S cr tary's prior approval to corr ct an administrativ rror or omission, as d scrib d in paragraph (b)(2) of this s ction, if th corr ction is not mad b for th clos of th cal ndar y ar of th rror or omission and th corr ction—

* * * * *

(vi) *S cr tary's automatic approval.* Th S cr tary grants automatic approval to corr ct an administrativ rror or omission d scrib d in paragraph (b)(2) of this s ction if—

(A) Th corr ction is not mad b for th clos of th cal ndar y ar of th rror or omission and th corr ction is a num rical chang to th housing cr dit dollar amount allocat d for th building or multipl -building proj ct;

(B) Th administrativ rror or omission r sult d in an allocation docum nt (th Form 8609, "Low-Incom Housing Cr dit Allocation C rtification," or th allocation docum nt und r th r quir m nts of s ction 42(h)(1)(E) or (F), and § 1.42–6(d)(2)) that ith r did not accurat ly r fl ct th numb r of buildings in a proj ct (for xampl , an allocation docum nt for a 10-building proj ct only r f r nc s 8 buildings inst ad of 10 buildings), or th corr ct information (oth r than th amount of cr dit allocat d on th allocation docum nt);

(C) Th administrativ rror or omission do s not aff ct th Ag ncy's ranking of th building(s) or proj ct and th total amount of cr dit th Ag ncy allocat d to th building(s) or proj ct; and

(D) Th Ag ncy corr cts th administrativ rror or omission by following th proc dur s d scrib d in paragraph (b)(3)(vii) of this s ction.

(vii) *How Ag ncy corr cts rrors or omissions subj ct to automatic approval.* An Ag ncy corr cts an administrativ rror or omission d scrib d in paragraph (b)(3)(vi) of this s ction by—

(A) Am nding th allocation docum nt d scrib d in paragraph (b)(3)(vi)(B) of this s ction to corr ct th administrativ rror or omission. Th Ag ncy will indicat on th am nd d allocation docum nt that it is making th "corr ction und r § 1.42–13(b)(3)(vii)." If corr cting th allocation docum nt r quir s including any additional B.I.N.(s) in th docum nt, th docum nt must includ any B.I.N.(s) alr ady xisting for buildings in th proj ct. If possibl , th additional B.I.N.(s) should b s qu ntially numb r d from th xisting B.I.N.(s);

(B) Am nding, if applicabl , th Sch dul A (Form 8610), "Carryov r

Allocation of th Low-Incom Housing Cr dit," and attaching a copy of this sch dul to Form 8610, "Annual Low-Incom Housing Cr dit Ag nci s R port," for th y ar th corr ction is mad . Th Ag ncy will indicat on th sch dul that it is making th "corr ction und r § 1.42–13(b)(3)(vii)." For a carryov r allocation mad b for January 1, 2000, th Ag ncy must compl t Sch dul A (Form 8610), and indicat on th sch dul that it is making th "corr ction und r § 1.42–13(b)(3)(vii)";

(C) Am nding, if applicabl , th Form 8609 and attaching th original of this am nd d form to Form 8610 for th y ar th corr ction is mad . Th Ag ncy will indicat on th Form 8609 that it is making th "corr ction und r § 1.42–13(b)(3)(vii)"; and

(D) Mailing or oth rwis d liv ring a copy of any am nd d allocation docum nt and any am nd d Form 8609 to th aff ct d taxpay r.

(viii) *Oth r approval proc dur s.* Th S cr tary may grant automatic approval to corr ct oth r administrativ rrors or omissions as d signat d in on or mor docum nts publish d ith r in th **F d ral R gist r** or in th Int rnal R v nu Bull tin (s § 601.601(d)(2) of this chapt r).

* * * * *

(d) * * * Paragraphs (b)(3)(vi), (vii), and (viii) of this s ction ar ff ctiv January 14, 2000.

Par. 7. S ction 1.42–17 is add d to r ad as follows:

§ 1.42–17 Qualified allocation plan.

(a) *R quir m nts*—(1) *In g n ral.* [R s rv d]

(2) *S l ction crit ria.* [R s rv d]

(3) *Ag ncy valuation.* S ction 42(m)(2)(A) r quir s that th housing cr dit dollar amount allocat d to a proj ct is not to xc d th amount th Ag ncy d t rmin s is n c ssary for th financial f asibility of th proj ct and its viability as a qualifi d low-incom housing proj ct throughout th cr dit p riod. In making this d t rmination, th Ag ncy must consid r—

(i) Th sourc s and us s of funds and th total financing plann d for th proj ct. Th taxpay r must c rtify to th Ag ncy th full xt nt of all f d ral, stat , and local subsidi s that apply (or which th taxpay r xp cts to apply) to th proj ct. Th taxpay r must also c rtify to th Ag ncy all oth r sourc s of funds and all d v lopm nt costs for th proj ct. Th taxpay r's c rtification should b suffici ntly d tail d to nabl th Ag ncy to asc rtain th natur of th costs that will mak up th total financing packag , including subsidi s and th anticipat d syndication or plac m nt proc ds to b rais d. D v lopm nt cost information, wh th r or not includibl in ligibl basis und r s ction 42(d), that should b provid d to th Ag ncy includ s, but is not limit d to, sit acquisition costs, construction conting ncy, g n ral contractor's ov rh ad and profit, archit ct's and ngin r's f s, p rmit and surv y f s, insuranc pr miums, r al stat tax s during construction, titl and r cording f s, construction p riod int r st, financing f s, organizational costs, r nt-up and mark ting costs, accounting and auditing costs, working capital and op rating d ficit r s rv s, syndication and l gal f s, and d v lop r f s;

(ii) Any proc ds or r c ipts xp ct d to b g n rat d by r ason of tax b n fits;

(iii) Th p rc ntag of th housing cr dit dollar amount us d for proj ct costs oth r than th costs of int rm diari s. This r quir m nt should not b appli d so as to imp d th d v lopm nt of proj cts in hard-to-d v lop ar as und r s ction 42(d)(5)(C); and

(iv) Th r asonabl n ss of th d v lopm ntal and op rational costs of th proj ct.

(4) *Timing of Ag ncy valuation*—(i) *In g n ral.* Th financial d t rminations and c rtifications r quir d und r paragraph (a)(3) of this s ction must b mad as of th following tim s—

(A) Th tim of th application for th housing cr dit dollar amount;

(B) Th tim of th allocation of th housing cr dit dollar amount; and

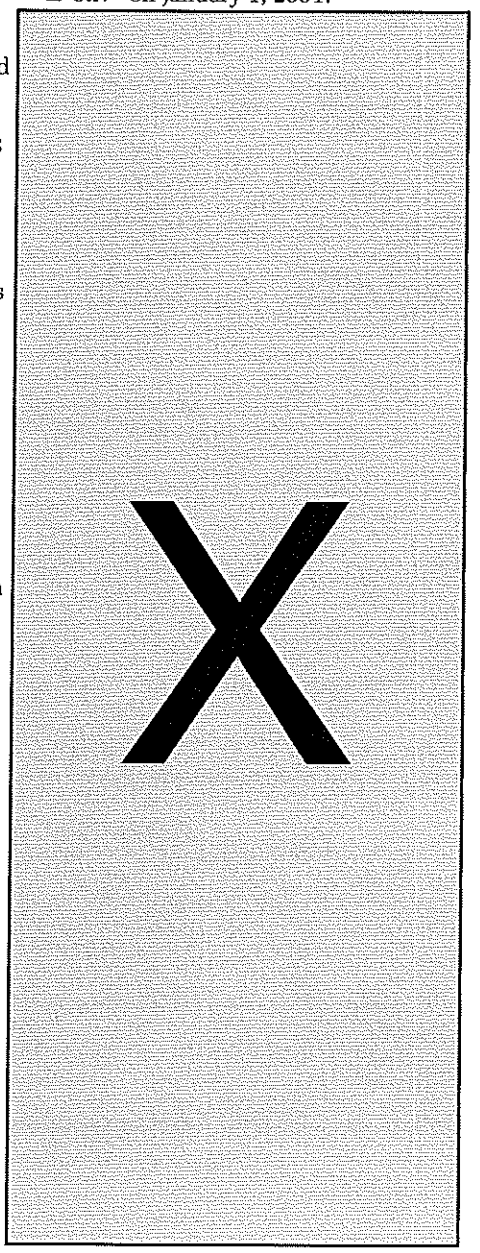
(C) Th dat th building is plac d in s rvic .

(ii) *Tim limit for plac d-in-s rvic valuation.* For purpos s of paragraph (a)(4)(i)(C) of this s ction, th valuation for wh n a building is plac d in s rvic must b mad not lat r than th dat th Ag ncy issu s th Form 8609, "Low-Incom Housing Cr dit Allocation C rtification." Th Ag ncy must valuat all sourc s and us s of funds und r paragraph (a)(3)(i) of this s ction paid, incurr d, or committ d by th taxpay r for th proj ct up until dat th Ag ncy issu s th Form 8609.

(5) *Sp cial rul for final d t rminations and c rtifications.* For th Ag ncy's valuation und r paragraph (a)(4)(i)(C) of this s ction, th taxpay r must submit a sch dul of proj ct costs. Such sch dul is to b pr par d on th m thod of accounting us d by th taxpay r for f d ral incom tax purpos s, and must d tail th proj ct's total costs as w ll as thos costs that may qualify for inclusion in ligibl basis und r s ction 42(d). For proj cts with mor than 10 units, th sch dul of proj ct costs must b accompani d by a C rtifi d Public Accountant's audit r port on th sch dul (an Ag ncy may r quir an audit d sch dul of proj ct costs for proj cts with f w r than 11 units). Th CPA's audit must b conduct d in accordanc with g n rally acc pt d auditing standards. Th auditor's r port must b unqualifi d.

(6) *Bond-financ d proj cts.* A proj ct qualifying und r s ction 42(h)(4) is not ntitl d to any cr dit unl ss th gov rnm ntal unit that issu d th bonds (or on b half of which th bonds w r issu d), or th Ag ncy r sponsibl for issuing th Form(s) 8609 to th proj ct, mak s d t rminations und r rul s similar to th rul s in paragraphs (a) (3), (4), and (5) of this s ction.

(b) *Eff ctiv dat .* This s ction is ff ctiv on January 1, 2001.



Internal Revenue Service Notice 88-80
(Income Determination)

Notice 88-80

The purpose of this notice is to inform taxpayers that regulations to be issued under section 42(g)(1) of the Internal Revenue Code of 1986 (the "Code") (relating to the determination of a qualified low-income housing project) will provide that the income of individuals and area median gross income (adjusted for family size) are to be made in a manner consistent with the determination of annual income and the estimates for median family income under section 8 of the United States Housing Act of 1937 (H.U.D. section 8).

For the purpose of H.U.D. section 8, annual income is defined under 24 CFR 813.106 (1987). HUD section 8 median family income estimates (i.e., area median gross income estimates) are based on decennial Census data P-60 income data and Department of Commerce County Business Patterns employment and earnings data. The determination of annual income and median family income estimates are based on definitions of income that include some items of income that are not included in a taxpayer's gross income for purposes of computing Federal Income Tax liability. Thus, the income of individuals and area median gross income (adjusted for family size) for purposes of section 42(g)(1) of the Code will NOT be made by reference to items of income used in determining gross income for purposed of computing Federal Income Tax liability.

This document serves as an "administrative pronouncement" as that term is described in section 1.661-3(b)(2) of the Income Tax Regulations and may be relied upon to the same extent as a revenue ruling or revenue procedure.

The principal author of this Notice is Christopher J. Wilson of the Legislation and Regulations Division. For further information regarding this Notice contact Mr. Wilson on (202) 566-4336 (not a toll-free call).

Internal Revenue Service
Revenue Ruling 91-38

(Low Income Housing Credit Questions and Answers)

Rev. Rul. 91-38

PURPOSE

This revenue ruling answers certain questions about the low-income housing credit provided for in section 42 of the Internal Revenue Code.

LAW

Section 38(a) of the Code provides for a general business credit against tax that includes the amount of the current year business credit. Section 38(b)(5) provides that the amount of the current year business credit includes the low-income housing credit determined under section 42(a). The low-income housing credit that may be claimed in any year is subject to the general business tax credit limitation of section 38(c).

Section 42(a) of the Code, added by section 252 of the Tax Reform Act of 1986 (the "1986 Act"), 1986-3 (Vol. 1) C.B. 106, provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any tax year in the credit period shall be an amount equal to the "applicable percentage" of the qualified basis of each qualified low-income building.

Credit Period

Section 42(f)(1) of the Code, as amended by section 1002(1)(2)(B) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), 1988-3 C.B. 1, 34, defines the credit period of any building as the period of 10 tax years beginning with the tax year in which the building is placed in service, or at the taxpayer's irrevocable election, the succeeding tax year, but in either case only if the building is qualified low-income building as of the close of the first year of the credit period.

For purposes of calculating the credit allowable for the first tax year of the credit period, section 42(f)(2) of the Code reduces the credit by applying the following first-year convention: the fraction used to determine qualified basis at the end of the first year is the sum of applicable fractions determined at the end of each full month the building was in service during that year, divided by 12. In the first tax year following the credit period, a taxpayer may recover any reduction in credit caused by applying the first-year convention during the first year of the credit period.

Applicable Percentage

In the case of any qualified low-income building placed in service by the taxpayer after 1987, section 42(b)(2)(A) of the Code provides that the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of (i) the month in which the building is placed in service, or (ii) at the election of the taxpayer (I) the month in which the taxpayer and the housing credit agency enter into an agreement with respect to the building (which is binding on the agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to the building, or (II) in the case of any building to which section 42(h)(4)(B) applies, the month in which the tax-exempt obligations are issued. Section 42(b)(2)(B) provides that the percentages prescribed by the Secretary for any month shall be percentages that will yield over a 10-year period amounts of credit that have a present value equal to: (i) 70 percent of the qualified basis, in the case of new buildings that are not federally subsidized for the tax year (70 percent present value credit), and (ii) 30 percent of the qualified basis, in the case of new buildings that are federally subsidized for the tax year and existing buildings (30 percent present value credit). The appropriate credit percentages for each month are published monthly in the revenue ruling containing the applicable federal rates.

Section 42(i)(2)(A) of the Code provides, in part, that for purposes of section 42(b)(1), a new building shall be treated as federally subsidized for any tax year if, at any time during the tax year or any prior tax year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market federal loan (as defined in section 42(i)(2)(D)), the proceeds of which are or were used (directly or indirectly) with respect to the building or its operation.

Under section 42(b)(1) of the Code, for any qualified low-income building placed in service by the taxpayer during 1987, the applicable percentage for new buildings not federally subsidized is 9 percent and the applicable percentage for existing or federally subsidized buildings is 4 percent.

After calendar year 1989, existing buildings that receive moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937, 42 U.S.C. 1437f (1988), at any time during the credit period, generally are not eligible for an allocation of credit. See section 7108(h)(5) of the Revenue Reconciliation Act of 1989 (the "1989 Act"), 1990-1 C.B. 214, 222. The provisions of the 1989 Act generally are effective for buildings allocated housing credit dollar amounts after calendar year 1989. If no allocation is necessary by reason of section 42(h)(4) of the Code because the building is substantially financed with certain tax- exempt obligations, the

provisions are generally effective for buildings placed in service after December 31, 1989.

The Revenue Reconciliation Act of 1990 (the "1990 Act"), (Pub. L. No. 101-508), provides a limited exception from the exclusion of buildings receiving moderate rehabilitation assistance under section 8(e)(2) of the United States Housing Act of 1937. Beginning with allocations made after 1990, buildings receiving assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of enactment of the 1990 Act) may be eligible for an allocation of credit.

Rehabilitation Expenditures

Under section 42(e)(3)(A) of the Code as in effect prior to the 1989 Act, rehabilitation expenditures paid incurred by the taxpayer with respect to any building could be treated as a separate new building only if the qualified basis attributable to rehabilitation expenditures incurred during any 24-month period, when divided by the number of low-income units in the building, was $2,000 or more. For calendar years after 1989, rehabilitation expenditures with respect to a building may be treated as a separate new building eligible for the credit under section 42(e)(3)(A) only if (i) the expenditures are allocable to one or more low-income units or substantially benefit such units, and (ii) the amount of such expenditures during any 24- month period meets the greater of the following requirements: (I) the amount is not less than 10 percent of the adjusted basis of the building, or (II) the qualified basis attributable to such expenditures, when divided by the number of low-income units in the building, is $3,000 or more. Under section 42(e)(2)(B), as in effect both before and after the 1989 Act, the term "rehabilitation expenditures" does not include the cost of acquisition of any building.

Former section 42(d)(5)(C) of the Code, which was added by TAMRA, and which is now section 42(d)(5)(B), provides that the eligible basis of any building shall not include any portion of the building's adjusted basis attributable to amounts with respect to which an election is made under section 167(k). The election under section 167(k) is an election to depreciate rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1987, under a straight line method using a useful life of 60 months. If no election is made under section 167(k), rehabilitation expenditures incurred by a taxpayer with respect to a low-income rental housing building may be included in the building's eligible basis. Section 1.167(k)- 1(b)(1) of the Income Tax Regulations provides rules governing when a taxpayer will be treated as having paid or incurred rehabilitation expenditures.

Under section 1.167(k)-1(b)(1) of the regulations, a taxpayer generally is treated as having paid or incurred rehabilitation expenditures if the rehabilitation is performed by or for the taxpayer or in accordance with the taxpayer's specifications, or if the taxpayer acquires the property attributable to the expenditures (or an interest therein) before the property is placed in service. Section 1.167(k)-1(b)(2) provides that the amount of rehabilitation expenditures treated as paid or incurred by the taxpayer is the lesser of (i) the rehabilitation expenditures paid or incurred before the date on which the taxpayer acquired an interest in the property attributable to the expenditures, or (ii) the taxpayer's cost or other basis for the property attributable to the rehabilitation expenditures paid or incurred before such date. Rehabilitation expenditures treated as having been paid or incurred by the taxpayer are deemed to have been paid or incurred on the date on which the expenditures were actually paid or incurred, determined in accordance with the method of accounting used by the person that actually paid or incurred the expenditures.

A taxpayer acquiring a building from a governmental unit may elect, under section 42(e)(3)(B) of the Code, to meet only the requirement that the qualified basis attributable to the rehabilitation expenditures incurred with respect to the building will be $3,000 or more when divided by the number of low-income units in the building. A taxpayer making this election may claim only the 30 percent present value credit on those expenditures.

Section 42(e)(4)(A) of the Code provides, in part, that expenditures treated as a separate new building under section 42(e) are considered placed in service at the close of the 24-month period during which the expenditures were incurred. According to section 42(e)(4)(B), the applicable fraction for the rehabilitation expenditures is the applicable fraction for the building with respect to which the expenditures were incurred.

Qualified Basis

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to (i) the "applicable fraction" (determined as of the close of the tax year) of (ii) the eligible basis of the building (determined under section 42(d)). Under section 42(c)(1)(B), the "applicable fraction" is the smaller of the unit fraction (the number of low-income units divided by the number of all residential rental units) or the floor space fraction (the floor space of the low-income

units divided by the floor space of all residential rental units).

In general, the eligible basis of a building under section 42(d) of the Code is its adjusted basis at the close of the first tax year of the credit period. However, a number of limitations apply. For example, if an existing building does not meet the requirements of section 42(d)(2)(B) (as described below), its eligible basis is zero under section 42(d)(2)(A)(ii). In addition, under section 42(e)(5), rehabilitation expenditures that a taxpayer elects to treat as a separate new building under section 42(e) may not be considered part of the eligible basis of an existing building under section 42(d)(2)(A)(i).

Requirements for Existing Buildings

Section 42(d)(2)(A) and (B) of the Code provides that the eligible basis of an existing building will be zero unless the building meets the following requirements: (i) the building is acquired by purchase (as defined in section 179(d)(2)); (ii) there is a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of (I) the date the building was last placed in service, or (II) the date of the building's most recent nonqualified substantial improvement (as defined in section 42(d)(2)(D)(i)); and (iii) the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time the building was previously placed in service. Furthermore, existing buildings are eligible for a credit allocation after calendar year 1989 only if a credit is allowable by reason of substantial rehabilitation of the building under section 42(e).

In determining when a building was last placed in service for purposes of satisfying the requirement in section 42(d)(2)(B)(ii) of the Code, section 42(d)(2)(D)(ii) provides that certain placements in service are not taken into account. The 1990 Act provides that as of November 5, 1990 (the date of its enactment), any placement in service of a single-family residence by any individual who owned and used the residence for no other purpose than as a principal residence is not taken into account for purposes of determining whether the 10- year requirement is met. See section 42(d)(2)(D)(ii)(V).

Transfers During the Compliance Period

Section 42(d)(7)(A) and (B) of the Code provides, in general, that the requirements of section 42(d)(2)(B) do not apply if a taxpayer acquires an existing building (or interest therein) for which a credit was allowed to any prior owner under section 42(a) and the taxpayer acquires the building (or interest therein) before the end of the building's compliance period. In that case, section 42(d)(7)(A)(ii) provides that the credit allowable to the taxpayer for any period after the acquisition is equal to the amount of credit that would have been allowable for that period to the prior owner had the owner not disposed of the building (or interest therein).

In general, a transfer of the property results in a new placed in service date if, on the date of the transfer the property is ready and available for its intended purpose. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-91 (1986), 1986-3 (Vol. 4) C.B. 91. However, if section 42(d)(7) of the Code applies to a transfer of the property, the fact that the transfer results in a new placed in service date does not jeopardize the purchaser's eligibility to claim the low-income housing credit, because the requirements of section 42(d)(2)(B) do not apply. According to section 42(f)(4), the credit will be allocated among the parties on the basis of the number of days the building (or interest) was held by each.

Definition of a Qualified Low-Income Housing Project

Under section 42(g)(1) of the Code, a "qualified low-income housing project" is any project for residential rental use that meets one of the following requirements: (A) 20 percent or more of the residential units in the project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income, as adjusted for family size, or (B) 40 percent or more of the residential units in the project are both rent- restricted and occupied by individuals whose income is 60 percent or less of area median gross income, as adjusted for family size. Once the taxpayer elects which requirement the project will meet, the election is irrevocable.

For buildings not subject to the amendments of the 1989 Act, section 42(g)(2)(A) of the Code provides that a unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limits applicable to the occupants under section 42(g)(1). For buildings subject to the amendments of the 1989 Act, a residential rental unit is rent-restricted if the gross rent with respect to the unit does not exceed 30 percent of the imputed income limitation applicable to the unit under section 42(g)(2)(C). Furthermore, section 42(g)(2)(A) provides that for buildings subject to the amendments of the 1989 Act, the amount of the income limitation for any period shall not be less than the limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the

project is a qualified low-income housing project.

Under section 42(i)(3)(B) of the Code, low-income units must be suitable for occupancy and used other than on a transient basis. Additionally, section 42(i)(3)(C) provides that no unit in a building that has four or fewer residential rental units shall be treated as a low-income unit if the owner of the units is (i) the occupant of a residential unit in the building, or (ii) is related to an occupant of a unit (as "related" is defined in section 42(d)(2)(D)(iii)). However, for calendar years after 1989, if a building is acquired or rehabilitated under a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in section 42(h)(5)(C)), the owner-occupant restriction of section 42(i)(3)(C) is inapplicable. In this case, the applicable fraction shall not exceed 80 percent of the unit fraction and any unit that is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

Recapture of Credit

According to section 42(j)(1) and (2) of the Code, if at the close of any tax year in the compliance period the building's qualified basis with respect to the taxpayer is less than the basis as of the close of the preceding tax year, then the taxpayer is liable for additional tax in an amount equal to the accelerated portion of credits allowed in earlier years with respect to the reduction in qualified basis, plus interest. The accelerated portion of the credit under section 42(j)(3) is the excess of (A) the aggregate credit allowed for those years for that basis, over (B) the aggregate credit that would be allowable for those years for that basis if the aggregate credit that would have been allowable for the entire compliance period were allowable ratably over 15 years, rather than 10 years.

If a building fails to remain part of a qualified low-income housing project (for example, because of non-compliance with the minimum set-aside requirement or the rent restrictions or other requirements imposed on the units constituting the set-aside) during the building's 15-year compliance period, the taxpayer or taxpayers that owned the building (or interests therein) must repay the entire accelerated portion of the credit, with interest, for all prior years. Generally, any change in ownership of a building during the building's compliance period is also a recapture event. See 2 H.R. Conf. Rep. No. 841, at II-96.

Section 42(j)(6) of the Code permits the taxpayer to avoid recapture upon disposition of the building or an interest therein by furnishing a bond to the Secretary in an amount satisfactory to the Secretary and for the period required by the Secretary, if the building is reasonably expected to continue to be operated as a qualified low-income building. Furthermore, for partnerships consisting of 35 or more partners, unless the partnership elects otherwise, no change in ownership will be deemed to occur if within a 12-month period at least 50 percent (in value) of the original ownership is unchanged. See 2 H.R. Conf. Rep. No. 841, at II-96, and H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II-83 (1988), 1988-3 C.B. 473, 573. A de minimis rule may apply to certain dispositions of interests in partnerships (other than large partnerships described in section 42(j)(5)) that own buildings for which a credit was claimed. See Rev. Rul. 90-60, 1990-2 C.B. 3, for additional information.

Allocation of Credit by Housing Credit Agencies

Under section 42(h)(1) of the Code, a taxpayer may not claim a credit on a qualified low-income building in excess of the housing credit dollar amount allocated to the building by the state or local housing agency in whose jurisdiction the building is located. However, under section 42(h)(4) a taxpayer need not obtain a credit allocation for the portion of a building's eligible basis financed by an obligation which is subject to the volume cap of section 146 and the interest on which is exempt from tax under section 103. Prior to the 1989 Act, if such an obligation financed 70 percent or more of the aggregate basis of the building and the land on which it was located, the entire building was exempt from the limits of section 42(h)(1). Under the 1989 Act, buildings placed in service after calendar year 1989 are exempt from the limits of section 42(h)(1) if 50 percent or more of the aggregate basis of the building and the land on which it is located are financed with such tax-exempt obligations.

Section 42(h)(2)(A) of the Code provides that the housing credit dollar amount allocated to a building for any calendar year applies to the building for all tax years in its compliance period that end during or after the year of allocation. However, under section 42(h)(1)(B), as amended by TAMRA, an allocation is taken into account only if it occurs not later than the close of the calendar year in which the building is placed in service, unless one of the exceptions in section 42(h)(1)(C), (D), (E), or (F) apply. Under section 42(h)(2)(B), the allocation reduces the credit agency's allocable housing credit dollar amount only for the year of the allocation.

QUESTIONS AND ANSWERS

A. *DETERMINATION OF CREDIT PERIOD ISSUES*

QUESTION 1.

How do taxpayers make the election under section 42(f)(1) of the Code to defer the start of the credit period?

ANSWER 1.

The building owner may elect under section 42(f)(1) of the Code to begin the credit period (and the compliance period) the year after the building is placed in service by checking the appropriate box on line 5a in Part II of Form 8609, Low-Income Housing Credit Allocation Certification. Form 8609 must be attached to the owner's federal income tax return for each year of the 15-year compliance period, which begins with the first year of the credit period. If the owner does not claim a low-income housing credit on its timely filed federal income tax return (taking any extensions into account) for the year in which the building is placed in service, or fails to timely file its federal income tax return for that year, the owner is deemed to have made the irrevocable election to begin the credit period (and the compliance period) the succeeding tax year. In the case of buildings held by flow-through entities, only the entity may file a Form 8609 to make the election under section 42(f)(1). Only one election may be made per building. If there are multiple owners that are not members of a flow-through entity, and each owner files a Form 8609 with respect to a building, all of the Form 8609s for that building must be consistent with regard to whether the election is made. Unless all the owners of a particular building make the section 42(f)(1) election, the credit period and compliance period for that building will begin with the year in which the building is placed in service. Once made, an election under section 42(f)(1) is binding on the owner and all successors in interest.

QUESTION 2.

X, a calendar year corporation, was created on June 1, 1987. On July 1, 1987, X placed in service a qualified low-income building. If X chooses not to defer the beginning of the credit period under section 42(f)(1) of the Code, when does the credit period for the building begin?

ANSWER 2.

A building's credit period is the period of 10 years (120 months) beginning with the first day of the tax year in which the building is placed in service, or the succeeding tax year if the election under section 42(f)(1) of the Code is made. The tax year that a building is placed in service is determined, at the time of placement in service, by the tax year of the owner who placed the building in service and is not affected by subsequent changes in the tax year of that owner or by the introduction of subsequent owners with different tax years.

Each building has only one credit period. For purposes of section 42(f) of the Code, when the first tax year of the credit period is a short tax year, the credit period begins 12 months before the end of the short tax year. In other words, the credit period begins on what would have been the first day of the tax year, had the tax year not been a short tax year.

Because X came into existence on June 1, 1987, X had a short tax year for calendar year 1987. Because X did not elect to defer the start of the credit period to the succeeding year, which would have been its first full tax year, the building's credit period began 12 months before the end of X's short tax year. Therefore, the credit period began January 1, 1987, rather than the first day of the short tax year, June 1, 1987. The credit for the first year of the credit period is computed according to the first-year convention in section 42(f)(2) of the Code.

B. *CREDIT COMPUTATION ISSUES*

QUESTION 3.

X, a calendar year corporation, placed a newly constructed qualified low-income building in service on February 1, 1987. X received a $90,000 housing credit allocation for 1987 from the state Y housing credit agency based upon the 9 percent applicable credit percentage and had a qualified basis in the building as of December 31, 1987, of $1,000,000. X did not elect to defer the start of the credit period under section 42(f)(1) of the Code. For calendar year 1987, X claimed a credit using the first-year convention of section 42(f)(2).

During calendar year 1988 (the second year of the credit period), because of a change in annual accounting period permitted under section 442 of the Code, X made a short-period return for the 8-month period beginning January 1, 1988, and ending August 31, 1988. May X claim any low-income housing credit on its short-period return?

ANSWER 3.

Yes. As Answer 2 explains, the building's credit period is determined, at the time of placement in service, by reference to the tax year of the owner who placed the building in service, and is not affected by subsequent changes in the owner's tax year. The amount of credit that a particular owner may claim on its return for a tax year is determined on the last day of that owner's tax year. Because X was a calendar year taxpayer and did not elect to defer the start of the credit period, the building's credit period begins

January 1, 1987, and ends December 31, 1996.

In accordance with section 42(a) of the Code, the amount of credit that X may claim on the short-period return is an amount equal to the product of the applicable percentage of 9 percent and 8/12 of the building's qualified basis as of August 31, 1988. X is entitled to only 8/12 of the applicable percentage of the qualified basis on the last day of the short-period tax year because the short period includes only 8 months. If the qualified basis was $1,000,000 on August 31, 1988, X would be allowed to claim a credit on its short- period return of $60,000 [(.09) x (8/12 x $1,000,000)]. Assuming X retains ownership of the building, continues to comply with the requirements of section 42 of the Code and remains on an August 31 tax year, for each succeeding tax year in the credit period the credit is based upon the qualified basis as of August 31 of that tax year. If the qualified basis on August 31, 1989, is $1,000,000, X may claim a credit of $90,000 [(the applicable percentage, .09) x ($1,000,000)] on its federal income tax return for the tax year ending August 31, 1989.

The last 4 months in the credit period (September 1996 through December 1996) are included in X's tax year beginning September 1, 1996, and ending August 31, 1997. The credit for those 4 months is based upon 4/12 of the qualified basis as of August 31, 1997. The credit for X's tax year ending August 31, 1997, consists of the credit for the last 4 months of the credit period plus the disallowed first year credit amount that is carried over to the 11th year under section 42(f)(2)(B) of the Code. See Question and Answer 5 below.

C. AVAILABILITY OF CREDIT TO SUBSEQUENT PURCHASERS

QUESTION 4.

What is the meaning of the word "allowed" as used in section 42(d)(7)(B)(i) of the Code, which permits a subsequent owner to step into the shoes of a prior owner and claim a credit on a qualified low-income building, but only if the credit was "allowed" to a prior owner?

ANSWER 4.

For purposes of section 42(d)(7)(B)(i) of the Code, the term "allowed" may also mean "allowable." If a qualified low-income building is acquired during the building's compliance period, section 42(d)(7)(B)(i) requires that a credit must have been allowed to a prior owner of the building if the new owner is to continue claiming the credit. In this manner, credits may be transferred to the new purchaser of a building (or interest therein) during the period for which the property is eligible to receive the credit, with the new purchaser "stepping into the shoes" of the seller as to credit percentage, basis, and liability for compliance and recapture. See 2 H.R. Conf. Rep. No. 841, at II-87. The purchaser's basis upon acquisition of the building (or interest therein) for section 42 purposes equals the eligible basis of the building (or interest therein) whether the purchase price is greater or less than that basis.

A credit need not actually have been claimed by a prior owner in order for a subsequent owner to claim the credit under section 42(d)(7) of the Code. If a taxpayer transfers a qualified low-income building (or an interest therein) before actually claiming a credit, but after having received an allocation or having qualified for the credit without an allocation (as provided in this ruling) under section 42(h)(4)(B), the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i). However, in order to be treated as having been allowed a credit, a prior owner must have actually received a low-income housing credit allocation for the building from a state housing credit agency before the transfer or must have actually qualified for the credit under section 42(h)(4)(B).

A state credit agency makes an allocation after reviewing the application submitted by the building owner and determining that the building will probably qualify as a qualified low-income building. A state credit agency may issue a reservation of a credit amount or a binding commitment to allocate credit in a later year as a preliminary step to issuing a credit allocation but, unlike a credit allocation, a reservation or a binding commitment may be revoked (for example, if specified conditions are not met by the building owner). Therefore, if a taxpayer transfers a qualified low-income building (or an interest therein) after the state agency reserves a low-income credit for that building but before the agency actually allocates that credit to that building, the credit will not be considered allowed to the prior owner within the meaning of section 42(d)(7)(B)(i) of the Code. If the credit is not considered allowed to the prior owner but the building has not been placed in service so that there is no violation of the 10-year rule in section 42(d)(2)(B)(ii) (and if the requirements of section 42 are otherwise met), the purchaser may apply to the state housing credit agency for an allocation of credit.

If a taxpayer receives an allocation with respect to a new building during the construction period of the building, as may be the case where the taxpayer expects to use the 10 percent carryover allocation rule in section 42(h)(1)(E) of the Code, and transfers the building (or an interest therein) before the building is

placed in service, the purchaser will take an eligible basis in the building (or interest therein) equal to the transferor's eligible basis in the building (or interest) at the time of transfer, whether the purchase price is greater or less than that basis. Because the property has not yet been placed in service, the eligible basis of the building has not yet been determined. The purchaser's eligible basis is determined at the end of the first tax year of the credit period. That eligible basis consists of both the transferor's eligible basis at the time of transfer and any additional costs incurred by the purchaser after the transfer, to the extent includible in eligible basis.

In the case of buildings placed in service after 1989 and financed with tax-exempt bonds issued after 1989, if a credit allocation is not necessary because the building meets the requirements of section 42(h)(4)(B) of the Code, the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i) when the following conditions are met: (1) the tax-exempt obligations have been issued; (2) the building has met the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located as required by section 42(m)(1)(D); (3) the governmental unit issuing the bonds has determined the credit dollar amount necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period as required by section 42(m)(2)(D); and (4) the state housing credit agency has assigned a building identification number (B.I.N.) to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

In the case of buildings financed with tax-exempt bonds issued before 1990, if a credit allocation is not necessary because the building meets the requirements of section 42(h)(4)(B) of the Code, the credit will be considered allowed to the prior owner for purposes of section 42(d)(7)(B)(i) when the following conditions are met: (1) the tax-exempt obligations have been issued; and (2) the state housing credit agency has assigned a B.I.N. to the building as is customarily done when an allocation of credit is made by the state housing credit agency.

Rev. Rul. 91-38, Table 1

Month	Number of occupied low-income units	Total number of units
March	2	10
April	2	10
May	2	10
June	2	10
July	4	10
August	6	10
September	7	10
October	9	10
November	10	10
December	10	10

QUESTION 5.

On March 1, 1987, developer D, a calendar-year taxpayer, placed in service a newly completed qualified low-income building. The building consisted of 10 units, all of which were expected to be occupied by low-income tenants. The qualified basis of the building was $100,000. D received a $9,000 housing credit dollar amount allocation for 1987 from the state housing credit agency based upon the 9 percent applicable percentage for newly constructed non-federally-subsidized buildings. D chose not to make the election under section 42(f)(1) of the Code to defer the start of the credit period. On July 20, 1987, D sold the building to T, whose tax year ends August 31. At the time of sale, D had not yet claimed any credit with respect to the building for the period preceding the transfer. Table 1 shows the number of units in the building that were occupied by low-income tenants at the close of each full month between March 1, 1987, and December 31, 1987, the close of the tax year during which the building was placed in service.

Is T eligible for the low-income housing credit under section 42 of the Code?

ANSWER 5.

Yes. Although D had not claimed any of the low-income housing credit prior to the transfer, D received a housing credit dollar amount allocation before the sale of the property, and D would have been allowed to claim a credit if D had retained ownership of the property and had complied with the requirements of section 42 of the Code. Therefore, under section 42(d)(7), T may "step into the shoes" of D and may claim the tax credit that would have been allowable to D for the period after the acquisition, provided that T complies with the requirements of section 42. See Question and Answer 4.

The building's credit period is determined by reference to the tax year (at the time of placement in service) of D, the owner who

placed the building in service, and is not affected by differing tax years of succeeding owners. However, the amount of credit that a particular owner may claim on a return for a tax year is determined on the last day of that owner's tax year. Had D, a calendar-year taxpayer, chosen to make the election under section 42(f)(1) of the Code to defer the start of the credit period, T would have calculated the credit as of January 1, 1988, the first day of the first year of the building's credit period, even though T owned the building prior to the start of the credit period.

For purposes of section 42(f)(4) of the Code, the owner who has held the property for the longest period during the month in which a transfer occurs is deemed to have held the property for the entire month and may claim a credit accordingly. In cases in which the transferor and transferee have held the property for the same amount of time during the month of the transfer, the transferor is deemed to have held the property for the entire month and the transferee's ownership of the property is deemed to begin the first day of the following month. In this example, for purposes of calculating the credit that T is entitled to claim, T does not immediately "step into the shoes" of D when the transfer occurs on July 20, 1987. Instead, because D held the property for more than half of the month of July, T may not begin claiming the credit that would have been allowable to D until August 1, 1987. Thereafter, T may claim the credit that would have been allowable to D until the end of the credit period (assuming T retains ownership of the property and the requirements of section 42 of the Code are otherwise met).

Because D, the taxpayer that placed the building in service, was a calendar year taxpayer and because D chose not to make the election under section 42(f)(1) of the Code to defer the start of the credit period, the building's credit period begins the first day of calendar year 1987 (January 1, 1987) and continues for 120 months (until December 31, 1996). The first year of the building's credit period is the period from January 1, 1987, through December 31, 1987.

Under section 42(f)(2) of the Code, the applicable fraction used for determining the credit with respect to any building for the first tax year of the credit period is 1/12 of the sum of the applicable fractions determined under section 42(c)(1) as of the close of each full month of that year during which the building was in service. The sum of the applicable fractions determined under section 42(c)(1) for the period between March 1, 1987 (the date the building was placed in service), and July 31, 1987 (the date through which D is deemed to have owned the property), is 2/10 + 2/10 + 2/10 + 2/10 + 4/10, for a total of twelve-tenths (12/10), which when divided by 12, yields 1/10 or 0.1. Under section 42(f)(2), the credit amount that pertains to the portion of the tax year from March 1, 1987, to July 31, 1987, is $900 (the applicable fraction of 0.1 times the eligible basis of $100,000 times the applicable percentage of .09). Whether D may claim this credit amount will be determined under section 42(j) (relating to recapture of the credit and the posting of a bond). See Rev. Rul. 90-60, 1990-2 C.B. 3, for additional information on recapture of the credit and the posting of a bond. T is not entitled to claim this credit amount because T may claim the credit only for the period after T acquires the property. However, during the month that T owns the property during its tax year ending August 31, 1987, the applicable fraction is 6/10. Therefore, T may claim a credit on its federal income tax return for the tax year ending August 31, 1987, in the amount of $450 (the applicable fraction of 0.05 or (6/10 times 1/12) times the eligible basis of $100,000 times the applicable percentage of .09).

The credit for the first 4 months of T's succeeding tax year, which begins September 1, 1987, and ends August 31, 1988, still must be determined according to the first-year convention in section 42(f)(2) of the Code. This is because those months are still part of the first year of the building's credit period. The sum of the monthly applicable fractions determined under section 42(c)(1) for the period from September 1, 1987, to December 31, 1987, is 36/10 or 3.6, which, when divided by 12 and multiplied by the eligible basis of $100,000 and the applicable percentage of .09, yields a credit amount of $2,700.

If on August 31, 1988, in T's succeeding tax year, the applicable fraction under section 42(c)(1) of the Code is 10/10 or 1.0, then T's qualified basis at the end of that tax year is $100,000 (1.0 times $100,000 of eligible basis). The credit for the remaining 8 months in T's tax year beginning September 1, 1987, and ending August 31, 1988, is $6,000 (8/12 times $100,000 of qualified basis times the applicable percentage of .09). T's total credit amount for the tax year beginning September 1, 1987, and ending August 31, 1988, is $8,700 ($2,700 + $6,000).

For each of T's succeeding tax years in the credit period, the credit is based upon the qualified basis as of the last day of T's tax year (August 31). The last 4 months in the credit period (September 1996 through December 1996) are included in T's tax year beginning September 1, 1996, and ending August 31, 1997. The credit for those 4 months is based upon 4/12 of the qualified basis as of August 31, 1997. The credit for T's tax year ending August 31, 1997, consists of the credit for the last 4 months of

the credit period plus the disallowed first-year credit amount that is carried over to the 11th year under section 42(f)(2)(B) of the Code.

The disallowed first-year credit amount is calculated in the following manner: if the first-year convention of section 42(f)(2) of the Code had not applied to the calculation of the credit for the first year of the building's credit period, the credit amount would have been $9,000 based upon an applicable fraction for that building of 10/10 as of December 31, 1987, multiplied by the eligible basis on that date of $100,000, multiplied by the applicable percentage of .09. However, because of the first-year convention of section 42(f)(2), the allowable credit with respect to the building for the first tax year in the credit period was only $4,050 ($900 allowable to D for the period prior to T's acquisition of the building + $450 allowable to T for its tax year ending August 31, 1987, + $2,700 for the period between September 1, 1987, and December 31, 1987, allowable to T for part of its tax year ending August 31, 1988). Therefore, the carryover credit amount is $4,950 (the difference between $9,000 and $4,050).

This carryover credit is allowable for the first tax year ending after December 31, 1996, the date the credit period ends. Accordingly, for T's tax year ending August 31, 1997, T calculates the credit for the last 4 months of the credit period (the period between August 31, 1996, and December 31, 1996), and adds to this the carryover credit. For T's tax year ending August 31, 1997, T may claim $3,000 for the 4 month period between September 1, 1996, and December 31, 1996, plus the carryover amount of $4,950, for a total credit in that year of $7,950.

D. *REHABILITATION EXPENDITURES ISSUES*

QUESTION 6:

If a taxpayer begins the rehabilitation of an existing building in January 1987 and completes the rehabilitation in December 1987, less than 24 months after the rehabilitation began, must the taxpayer wait until December 1988, a 24-month period, before the rehabilitation expenditures are treated as placed in service under section 42(e)(4)(A) of the Code?

ANSWER 6.

No. Under section 42(e)(3)(A) of the Code, a taxpayer may aggregate all rehabilitation expenditures incurred during any 24- month period for purposes of meeting the minimum expenditures requirement of section 42(e)(3)(A). Although section 42(e)(4)(A) treats the expenditures aggregated under section 42(e)(3)(A) as placed in service at the close of the 24-month period permitted for aggregating such expenditures, if the rehabilitation is completed and the minimum expenditures requirement of section 42(e)(3)(A) is met in less than 24 months, the expenditures may be treated as placed in service at the close of that period; however, in no event may the aggregation period exceed 24 months. Therefore, rehabilitation expenditures are treated as placed in service at the close of the 24-month or shorter aggregation period in which the rehabilitation is completed and the expenditures requirement of section 42(e)(3)(A) is met. Only those rehabilitation expenditures subject to the amendments made by section 201(a) of the 1986 Act (requiring 27.5 year depreciation of residential rental property) are eligible for the low-income housing credit under section 42. Expenditures incurred prior to 1987 and not placed in service prior to 1987 may be eligible for the credit, if the expenditures are subject to the amendments made by section 201(a) of the 1986 Act. See section 42(c)(2)(B).

QUESTION 7.

During the period from March 1, 1987, through December 31, 1987, A, the owner of an existing building, incurred substantial rehabilitation expenditures in amounts that met or exceeded the minimum expenditures requirement of section 42(e)(3)(A) of the Code. These expenditures were not federally subsidized. On January 1, 1988, A sold the building to B. On that date, the building did not meet the requirements for an existing building under section 42(d)(2)(B) (in particular, the 10-year requirement of section 42(d)(2)(B)(ii)); however, B bought the property before the rehabilitation expenditures were placed in service. May B receive a housing credit dollar amount in 1988 based upon the 9 percent applicable percentage (the 70 percent present value credit) for the rehabilitation expenditures?

ANSWER 7.

Yes. Because A had not received a housing credit dollar amount allocation for the rehabilitation expenditures A had incurred before selling the property to B, no credit was "allowed" to A as a prior owner and, therefore, the rules of section 42(d)(7) of the Code do not apply. See Question and Answer 4. However, section 1.167(k)- 1(b)(1) of the regulations provides rules governing when a taxpayer is treated as having paid or incurred rehabilitation expenditures. Although the election under section 167(k) of the Code may no longer be made with respect to rehabilitation expenditures on a low-income rental housing building, rules similar to those of section 1.167(k)-1(b)(1) will generally still apply in determining when rehabilitation

expenditures are treated as paid or incurred by the taxpayer under section 42. Because B acquired the property attributable to the rehabilitation expenditures before such property was placed in service, section 1.167(k)-1(b)(1) treats B as having paid or incurred the expenditures to the extent of the lesser of the rehabilitation expenditures paid or incurred before B's acquisition or B's cost or other basis attributable to the rehabilitation expenditures. Accordingly, for purposes of section 42, B's basis in the rehabilitation expenditures is the lesser of A's basis in the rehabilitation expenditures at the time of transfer (in general, A's actual cost paid or incurred for the rehabilitation expenses prior to January 1, 1988), or B's cost or other basis for the property attributable to the rehabilitation expenditures paid or incurred before that date. When B places the rehabilitated property in service, that property's original use is considered to begin with B.

If A had placed the rehabilitation expenditures in service for depreciation purposes before selling the building to B, B would not be treated as having paid or incurred the expenditures under section 42 of the Code or section 1.167(k)-1(b)(1) of the regulations because B would have acquired the the property attributable to the rehabilitation expenditures after that property was placed in service. In order for B to be eligible to receive a housing credit dollar amount for the cost of acquiring the building, the building would have to meet the requirements for an existing building under section 42(d)(2)(B) of the Code (including the requirement that there be a period of at least 10 years between the date of the building's acquisition and the later of (I) the date the building was last placed in service, or (II) the date of the most recent nonqualified substantial improvement of the building as defined in section 42(d)(2)(D)).

QUESTION 8.

Assume the same facts as in Question 7, except that A incurred rehabilitation expenditures that did not equal or exceed the minimum prescribed by section 42(e)(3)(A) of the Code. Is B eligible to receive an allocation of credit with regard to the rehabilitation expenditures that A incurred?

ANSWER 8.

Yes. Section 1.167(k)-1(b)(1) of the regulations treats B as having paid or incurred the expenditures, and a similar rule will be applied for purposes of section 42 of the Code. Under section 42(e)(5), B may elect to treat A's expenditures either as (a) part of the eligible basis of an existing building that meets the requirements of section 42(d)(2)(B), or (b) part of a series of expenditures treated as a separate new building under section 42(e).

(a) If the existing building that B purchased met the requirements of section 42(d)(2)(B) of the Code, B could include the rehabilitation expenditures in the building's eligible basis under section 42(d)(2)(A)(i) but only to the extent the cost of the expenditures is not already reflected in the purchase price for the building. B would be eligible to receive an allocation of credit, based upon the 30 percent present value credit for existing buildings, with respect to the building's entire eligible basis. However, see Note, below.

(b) Alternatively, regardless of whether the building meets the requirements of section 42(d)(2)(B) of the Code, B may continue to make rehabilitation expenditures and may count the expenditures made by A toward the amount prescribed by section 42(e)(3). Because the expenditures were not federally subsidized, once the aggregate rehabilitation expenditures meet the requirements of section 42(e), B would be eligible to receive an allocation of credit, based upon the 70 percent present value credit for new buildings, with respect to the eligible basis attributable to the aggregate rehabilitation expenditures.

NOTE: Under section 7108(d)(1) of the 1989 Act, generally effective for allocations of credit after December 31, 1989, an existing building is not eligible for the credit unless an allocation of credit is allowable by reason of substantial rehabilitation of the building under section 42(e) of the Code. Therefore, the rehabilitation expenditures would have to equal at least the minimum amount prescribed by section 42(e)(3)(A) if the building is to be eligible for any credit.

E. *10-YEAR OWNERSHIP REQUIREMENT FOR EXISTING BUILDINGS*

QUESTION 9.

Section 42(d)(2)(B)(ii)(I) of the Code requires that there be a minimum of 10 years between the date a taxpayer acquires an existing building and the date the building was last placed in service. Does this requirement apply only if the building was last placed in service as residential rental property?

ANSWER 9.

No. Except as provided in section 42(d)(2)(D)(ii) of the Code, for purposes of section 42(d)(2)(B)(ii)(I), there must be a minimum of 10 years between the date a taxpayer acquires an existing building and the date the building was last placed in service for any purpose, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

F. QUALIFIED RESIDENTIAL RENTAL PROPERTY

QUESTION 10.

If a taxpayer owned a home and used it as a personal residence can the taxpayer in 1987 convert the property into residential rental property for low-income housing and claim a tax credit for an existing building under section 42(d) of the Code without substantially rehabilitating the building as described in section 42(e)?

ANSWER 10.

No. In this situation, the taxpayer previously placed the building in service as a personal residence. Under section 42(d)(2)(A)(ii) and (B)(iii) of the Code, an existing building has an eligible basis of zero if it was previously placed in service by the taxpayer or by any person who was a related person (as defined in section 42(d)(2)(D)(iii)) with regard to the taxpayer as of the time the building was previously placed in service. This is the case regardless of whether the taxpayer placed the building in service as a personal residence more than 10 years ago (i.e., regardless of whether the 10-year requirement of section 42(d)(2)(B)(ii) is met).

However, if the taxpayer converts the property into residential rental property for low-income housing and, in so doing, incurs substantial rehabilitation expenditures in the amount prescribed by section 42(e)(3) of the Code, the taxpayer may treat the rehabilitation expenditures as a separate new building under section 42(e)(1). Because the requirements of section 42(d)(2)(B) do not apply to new buildings, the taxpayer would be eligible for a low- income housing credit allocation based on the qualified basis attributable to the aggregate rehabilitation expenditures.

QUESTION 11.

Taxpayer A bought a newly-constructed, single-family home in 1979 and placed it in service as residential rental property. The property was residential rental property from 1979 to 1985, when A sold the property to B who used it solely as a personal residence from 1985 to 1991. In 1991, if C purchases the property, substantially rehabilitates the property, and converts it into residential rental property for low-income housing, may C receive a tax credit for acquisition and rehabilitation of an existing building under section 42(d) of the Code?

ANSWER 11.

Yes. Although there has only been a period of 6 years between the date C acquired the property and the date the property was last placed in service by B, section 42(d)(2)(D)(ii)(V) of the Code, as added by the 1990 Act, provides that for allocations of credit made after 1990, there shall not be taken into account, in determining when a building was last placed in service, any placement in service of a single-family residence by any individual who owned and used such residence for no other purpose than as a principal residence. Under this provision, B's placement in service is not taken into account for purposes of the 10-year requirement of section 42(d)(2)(B)(ii). Therefore, there has been at least 10 years between the date C acquired the property in 1991, and the date the building was last placed in service by A in 1979 as residential rental property. Assuming the building meets the other requirements of section 42(d)(2)(B) applicable to existing buildings (including the requirement that a credit is allowable to the building for substantial rehabilitation under section 42(e), unless the exception in section 42(f)(5)(B) applies), C may be eligible to receive a housing credit dollar amount for acquisition and rehabilitation of the single-family home.

G. *RENT-RESTRICTED RESIDENTIAL RENTAL UNIT*

QUESTION 12.

Must the cost of meals provided in a common dining facility of a low-income project be included in gross rent under section 42(g)(2)(A) of the Code?

ANSWER 12.

Section 42(g)(2)(A) of the Code provides that a residential rental unit is rent-restricted if the gross rent (defined in section 42(g)(2)(B)) that is paid for the unit does not exceed 30 percent of the income limits applicable to the tenants under section 42(g)(1).

Notice 89-6, 1989-1 C.B. 625, provides that the furnishing of services other than housing (whether or not such services are significant) will not prevent property from qualifying as residential rental property. However, any charges for services that are not optional to low-income tenants must be included in gross rent for purposes of section 42(g)(2)(A) of the Code. A service is optional if payment for the service is not required as a condition of occupancy.

In the case of a qualified low-income building with a common dining facility, if a practical alternative exists for tenants to obtain meals other than from the dining facility, and if payment for the meals in the facility is not required as a condition of occupancy, the cost of the meals will not be included in gross rent for purposes of section 42(g)(2)(A) of the Code.

The requirement that a practical alternative exists for tenants to obtain meals other than from the dining facility shall apply to projects receiving allocations of housing credit dollar amounts after

calendar year 1991, and for projects not subject to the allocation limits, the requirement shall apply to projects placed in service after calendar year 1991.

EFFECTIVE DATE

The Internal Revenue Service may issue regulations addressing some of the points covered by this ruling. To the extent the regulations are inconsistent with the guidance provided by this ruling, the regulations will have prospective effect. Taxpayers may therefore rely on the provisions of this ruling until further guidance is published.

DRAFTING INFORMATION

The principal author of this revenue ruling is Donna Young of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Ms. Young on (202) 377-6349 (not a toll-free call).

under section 9 of the Act, and that precedent already exists for allowing HUD to make certain interpretations relating to the section 42 program. The final regulations do not adopt this suggestion. The IRS and Treasury believe they should retain the ability to determine what costs are appropriately characterized as operating costs that require a reduction in a building's eligible basis under section 42(d)(5) of the Code.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Christopher J. Wilson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for Section 1.42–16T and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.42–16 also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–16 is added to read as follows:

§ 1.42–16 Eligible basis reduced by federal grants.

(a) *In general.* If, during any taxable year of the compliance period (described in section 42(i)(1)), a grant is made with respect to any building or the operation thereof and any portion of the grant is funded with federal funds (whether or not includible in gross income), the eligible basis of the building for the taxable year and all succeeding taxable years is reduced by the portion of the grant that is so funded.

(b) *Grants do not include certain rental assistance payments.* A federal rental assistance payment made to a building owner on behalf or in respect of a tenant is not a grant made with respect to a building or its operation if the payment is made pursuant to—

(1) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)

(2) A qualifying program of rental assistance administered under section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g); or

(3) A program or method of rental assistance as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(c) *Qualifying rental assistance program.* For purposes of paragraph (b)(2) of this section, payments are made pursuant to a qualifying rental assistance program administered under section 9 of the United States Housing Act of 1937 to the extent that the payments—

(1) Are made to a building owner pursuant to a contract with a public housing authority with respect to units the owner has agreed to maintain as public housing units (PH-units) in the building;

(2) Are made with respect to units occupied by public housing tenants, provided that, for this purpose, units may be considered occupied during periods of short term vacancy (not to exceed 60 days); and

(3) Do not exceed the difference between the rents received from a building's PH-unit tenants and a pro rata portion of the building's actual operating costs that are reasonably allocable to the PH-units (based on square footage, number of bedrooms, or similar objective criteria), and provided that, for this purpose, operating costs do not include any development costs of a building (including developer's fees) or the principal or interest of any debt incurred with respect to any part of the building.

(d) *Effective date.* This section is effective September 26, 1997.

§ 1.42–16T [Removed]

Par. 3. Section 1.42–16T is removed.

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25490 Filed 9–25–97; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8732]

RIN 1545–AT60

Available Unit Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the treatment of low-income housing units in a building that is occupied by individuals whose incomes increase above 140 percent of the income limitation applicable under section 42(g)(1). These regulations affect owners of those buildings who claim the low-income housing tax credit.

DATES: These regulations are effective September 26, 1997.

For dates of applicability of these regulations, see § 1.42–15(i).

FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1996, the IRS published a notice of proposed rulemaking in the **Federal Register** (PS–29–95 at 61 FR 27036) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42(g)(2)(D) of the Internal Revenue Code. A public hearing was scheduled for September 17, 1996, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. However, the IRS received no requests to speak at the public hearing, and no public hearing was held. Written comments responding to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

The general rule in section 42(g)(2)(D)(i) provides that if the income

of an occupant of a low-income unit increases above the income limitation applicable under section 42(g)(1), the unit continues to be treated as a low-income unit. This general rule only applies if the occupant's income initially met the income limitation and the unit continues to be rent-restricted. Section 42(g)(2)(D)(ii), however, provides an exception to the general rule in section 42(g)(2)(D)(i). Under this exception, the unit ceases being treated as a low-income unit when two conditions occur. The first condition is that the occupant's income increases above 140 percent of the income limitation applicable under section 42(g)(1), or above 170 percent for a deep rent skewed project described in section 142(d)(4)(B) (applicable income limitation). When this occurs, the unit becomes an over-income unit. The second condition is that a new occupant, whose income exceeds the applicable income limitation (nonqualified resident), occupies any residential unit in the building of a comparable or smaller size (comparable unit).

Rules and Definitions

One commentator suggested that the available unit rule under the proposed regulations did not clearly indicate whether the aggregate income of all occupants of a unit is taken into account. Accordingly, the final regulations clarify that an over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Commentators requested that the final regulations specify whether a comparable unit is measured by floor space or number of bedrooms. The final regulations provide that a comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available.

Some commentators stated that the provision in the proposed regulations that all available comparable units (not just the "next available" unit) must be rented to qualified residents to continue treating an over-income unit as a low-income unit is inconsistent with the title of section 42(g)(2)(D)(ii). Although the title of that provision uses the term next available unit, the text of the rule provides that if any available comparable unit is occupied by a nonqualified resident, the over-income unit ceases to be treated as a low-income unit. This means that if a building has more than one over-income unit, renting any available comparable unit (a comparably sized or smaller unit) to a qualified resident preserves the status of all over-income units as low-income units. Similarly, if any available comparable unit is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units. In operation, this means that the owner must continue to rent any available comparable unit to a qualified resident until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over-income units as low-income units has no immediate significance. (However, the failure to maintain an over-income unit as a low-income unit may affect the owner's decision of whether or not to rent a particular available unit at market rate at a later time.) Consequently, the final regulations provide that all available comparable units in the building, not only the next available comparable unit, must be rented to qualified residents to retain the low-income status of the over-income units.

Application of Rules on a Building by Building Basis

The proposed regulations provide that in a project containing more than one low-income building, the available unit rule applies separately to each building. Some commentators suggested that the regulations should permit residents of over-income units to move to available units in different buildings within the same low-income housing project without violating the available unit rule. However, because the requirements under section 42 must be satisfied on a building by building basis, the final regulations provide that the available unit rule only permits a current resident to move to another unit within the same building of a low-income housing project.

In addition, in response to requests from several commentators, the final regulations make clear that when a current resident moves to a different unit within the same low-income building, the units exchange status. (See example 2 of § 1.42–15(g) of the proposed regulations and § 1.42–15(h) of the final regulations.) Thus, the newly occupied unit adopts the status of the vacated unit, and the vacated unit assumes the status the newly occupied unit had immediately prior to its occupancy by the qualifying residents.

Timing Issues

The methods of committing rental units to tenants varies in different jurisdictions. However, it is a common rental practice to have some form of preliminary reservation for a unit prior to the date on which a lease is signed or the unit is occupied. Thus, several commentators have requested clarification that once a unit is reserved for a prospective tenant, it is no longer treated as available for purposes of the available unit rule. Accordingly, the final regulations provide that a unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to a reservation that is binding under local law.

Finally, financing arrangements using obligations that purport to be exempt facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). The requirements under section 142(d) may differ from those under section 42. Accordingly, the final regulations provide that the rules under the final regulations are not intended as an interpretation of the applicable rules under section 142.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is David Selig, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.42–15 is also issued under 26 U.S.C. 42(n); * * *

Par. 2. Section 1.42–15 is added to read as follows:

§ 1.42–15 Available unit rule.

(a) *Definitions.* The following definitions apply to this section:

Applicable income limitation means the limitation applicable under section 42(g)(1) or, for deep rent skewed projects described in section 142(d)(4)(B), 40 percent of area median gross income.

Available unit rule means the rule in section 42(g)(2)(D)(ii).

Comparable unit means a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in section 142(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.

Current resident means a person who is living in the low-income building.

Low-income unit is defined by section 42(i)(3)(A).

Nonqualified resident means a new occupant or occupants whose aggregate income exceeds the applicable income limitation.

Over-income unit means a low-income unit in which the aggregate income of the occupants of the unit increases above 140 percent of the applicable income limitation under section 42(g)(1), or above 170 percent of the applicable income limitation for deep rent skewed projects described in section 142(d)(4)(B).

Qualified resident means an occupant either whose aggregate income (combined with the income of all other occupants of the unit) does not exceed the applicable income limitation and who is otherwise a low-income resident under section 42, or who is a current resident.

(b) *General section 42(g)(2)(D)(i) rule.* Except as provided in paragraph (c) of this section, notwithstanding an increase in the income of the occupants of a low-income unit above the applicable income limitation, if the income of the occupants initially met the applicable income limitation, and the unit continues to be rent-restricted—

(1) The unit continues to be treated as a low-income unit; and

(2) The unit continues to be included in the numerator and the denominator of the ratio used to determine whether a project satisfies the applicable minimum set-aside requirement of section 42(g)(1).

(c) *Exception.* A unit ceases to be treated as a low-income unit if it becomes an over-income unit and a nonqualified resident occupies any comparable unit that is available or that subsequently becomes available in the same low-income building. In other words, the owner of a low-income building must rent to qualified residents all comparable units that are available or that subsequently become available in the same building to continue treating the over-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance. The failure to maintain the over-income units as low-income units, however, may affect the decision of whether or not to rent a particular available unit at market rate at a later time. A unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

(d) *Effect of current resident moving within building.* When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident, whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

(e) *Available unit rule applies separately to each building in a project.* In a project containing more than one low-income building, the available unit rule applies separately to each building.

(f) *Result of noncompliance with available unit rule.* If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as low-income units; thus, comparably sized or larger over-income units would lose their status as low-income units.

(g) *Relationship to tax-exempt bond provisions.* Financing arrangements that purport to be exempt-facility bonds under section 142 must meet the requirements of sections 103 and 141 through 150 for interest on the obligations to be excluded from gross income under section 103(a). This section is not intended as an interpretation under section 142.

(h) *Examples.* The following examples illustrate this section:

Example 1. This example illustrates noncompliance with the available unit rule in a low-income building containing three over-income units. On January 1, 1998, a qualified low-income housing project, consisting of one building containing ten identically sized residential units, received a housing credit dollar amount allocation from a state housing credit agency for five low-income units. By the close of 1998, the first year of the credit period, the project satisfied the minimum set-aside requirement of section 42(g)(1)(B). Units 1, 2, 3, 4, and 5 were occupied by individuals whose incomes did not exceed the income limitation applicable under section 42(g)(1) and were otherwise low-income residents under section 42. Units 6, 7, 8, and 9 were occupied by market-rate tenants. Unit 10 was vacant. To avoid recapture of credit, the project owner must maintain five of the units as low-income units. On November 1, 1999, the certificates of annual income state that annual incomes of the individuals in Units 1, 2, and 3 increased above 140 percent of the income limitation applicable under section 42(g)(1), causing those units to become over-income units. On November 30, 1999, Units 8 and 9 became vacant. On December 1, 1999, the project owner rented Units 8 and 9 to qualified residents who were not current residents at rates meeting the rent restriction requirements of section 42(g)(2). On December 31, 1999, the project owner rented Unit 10 to a market-rate tenant. Because Unit 10, an available comparable unit, was leased to a market-rate tenant, Units 1, 2, and 3 ceased to be treated as low-income units. On that date, Units 4, 5, 8, and 9 were the only remaining low-income units. Because the project owner did not maintain five of the residential units as low-income units, the qualified basis in the building is reduced, and credit must be recaptured. If the project owner had rented Unit 10 to a qualified resident who was not a current resident,

eight of the units would be low-income units. At that time, Units 1, 2, and 3, the over-income units, could be rented to market-rate tenants because the building would still contain five low-income units.

Example 2. This example illustrates the provisions of paragraph (d) of this section. A low-income project consists of one six-floor building. The residential units in the building are identically sized. The building contains two over-income units on the sixth floor and two vacant units on the first floor. The project owner, desiring to maintain the over-income units as low-income units, wants to rent the available units to qualified residents. J, a resident of one of the over-income units, wishes to occupy a unit on the first floor. J's income has recently increased above the applicable income limitation. The project owner permits J to move into one of the units on the first floor. Despite J's income exceeding the applicable income limitation, J is a qualified resident under the available unit rule because J is a current resident of the building. The unit newly occupied by J becomes an over-income unit under the available unit rule. The unit vacated by J assumes the status the newly occupied unit had immediately before J occupied the unit. The over-income units in the building continue to be treated as low-income units.

(i) *Effective date.* This section applies to leases entered into or renewed on and after September 26, 1997.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: August 26, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–25493 Filed 9–25–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD8–97–038]

RIN 2115–AE46

Special Local Regulations; 1997 Galveston Offshore Powerboat Festival, Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Galveston Offshore Powerboat Festival. This event will be held on October 11, 1997 from 11 a.m. to 5 p.m. in the Galveston Ship Channel and on October 12, 1997 from 10 a.m. to 6 p.m. offshore of Galveston Island at Galveston, Texas. These regulations are needed to provide for the safety of life on the navigable waters during the event.

DATES: These regulations become effective on October 11, 1997 at 10:30 a.m. until 5:30 p.m. and on October 12, 1997 at 9:30 a.m. until 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: LT Harry Schmidt, Operations Officer, U.S. Coast Guard Group Galveston. Tel: (409) 766–5603.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rule making for these regulations has not been published, and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would be impracticable. The details of the event were not finalized in sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The marine event requiring this regulation is a power boat race called the "1997 Galveston Offshore Powerboat Festival". This event is sponsored by Texas Gulf Coast Racing, Inc. It will consist of an inshore powerboat race in the Galveston Ship Channel on October 11, 1997 and an offshore race on October 12, 1997. Approximately 60 offshore V-hull and catamaran-hull outboard and inboard race boats from 22 to 50 feet in length operating at high speeds are expected to participate in the races. The courses to be followed by the races will be marked by patrol vessels positioned at various points along each route. Fifty to two hundred spectator boats are expected for this event.

While viewing the event at any point outside the regulated area is not prohibited spectators will be encouraged to congregate within areas designated by the sponsor. Non-participating vessels will be permitted to transit the area every hour on the hour at No Wake Speed with the permission of the patrol commander.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because of the event's short duration.

Small Entities

The Coast Guard finds that the impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) that this temporary rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e (34) (h) of Commandant Instruction M16475.1B, (as revised by 61 FR 13563; March 27, 1996) this rule is excluded from further environmental documentation.

List of Subjects In 33 CFR Part 100

Mine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T08–038 is added to read as follows:

§ 100.35–T08–038 Galveston, TX.

(a) *Regulated Area:* The Galveston Ship Channel from the Pelican Island Bridge to Pier 9 on October 11, 1997 and The Gulf of Mexico within the area bounded by a point on the shoreline at 29–18.7N, 094–45.5W southeast to 29–18.2N, 094–45.0W thence southwest to 29–16.0N, 094–46.4W thence west to 29–14.8.0N, 094–49.6W thence northwest to the shoreline at 29–15.7N, 094–52.0W on October 12, 1997.

(b) *Special Local Regulation:* All persons and vessels not registered with the sponsors as participants or official patrol vessels are considered spectators.

Internal Revenue Service Revenue Ruling 92-61 (Treatment of Resident Manager's Unit)

Rev. Rul. 92-61

ISSUE

If a unit in a qualified low-income building is occupied by a full-time resident manager, is the adjusted basis of that unit included in the building's eligible basis under section 42(d)(1) of the Internal Revenue Code and is that unit included in the applicable fraction under section 42(c)(1)(B) for determining the qualified basis of the building?

FACTS

At the beginning of 1990, LP, a limited partnership with a calendar tax year, placed in service a newly constructed apartment building that qualified for the low-income housing credit under section 42(a) of the Code. LP elected to meet the 40-60 test of section 42(g)(1)(B), which requires that at least 40 percent of the units in the building be rent-restricted and occupied by tenants whose incomes are 60 percent or less of area median gross income. Throughout 1990, the first year of the building's credit period, 69 of the 70 units in the building were rent-restricted and occupied by tenants whose incomes were 60 percent or less of area median gross income. The remaining unit in the building was occupied by a resident manager who was hired by LP to manage the building and to be on call to attend to the maintenance needs of the other tenants. All of the units in the building meet the same standard of quality and have the same amount of floor space.

LAW AND ANALYSIS

Section 42(a) of the Code provides that the amount of the low- income housing credit determined for any tax year in the credit period is an amount equal to the applicable percentage of the qualified basis of each low-income building.

Section 42(c)(1)(A) of the Code defines the qualified basis of any qualified low-income building for any tax year as an amount equal to the applicable fraction, determined as of the close of the tax year, of the eligible basis of the building, determined under section 42(d)(5).

Section 42(c)(1)(B) of the Code defines the applicable fraction as the smaller of the unit fraction or the floor space fraction. Section 42(c)(1)(B) defines the unit fraction as the fraction the numerator of which is the number of low-income units in the building and the denominator of which is the number of residential rental units, whether or not occupied, in the building. Section 42(c)(1)(D) defines the floor space fraction as the fraction the numerator of which is the total floor space of the low-income units in the building and the denominator of which is the total floor space of the residential rental units, whether or not occupied, in the building. In general, under section 42(i)(3)(B), a low-income unit is any unit that is rent-restricted and occupied by individuals meeting the income limitation applicable to the building.

Section 42(d)(1) of the Code provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in section 42(d)(4)(B), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation used in common areas or provided as comparable amenities to all residential rental units in the building.

The legislative history of section 42 of the Code states that residential rental property, for purposes of the low-income housing credit, has the same meaning as residential rental property within section 103. The legislative history of section 42 further states that residential rental property thus includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the project. 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89. Under section 1.103-8(b)(4) of the Income Tax Regulations, facilities that are functionally related and subordinate to residential rental units are considered residential rental property. Section 1.103-8(b)(4)(iii) provides that facilities that are functionally related and subordinate to residential rental units include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the project. The examples given by section 1.103-8(b)(4)(iii) of facilities reasonably required for a project specifically include units for resident managers or maintenance personnel.

Accordingly, the unit occupied by LP's resident manager is residential rental property for purposes of section 42 of the Code. The adjusted basis of the unit is includible in the building's eligible basis under section 42(d)(1). The inclusion of the adjusted basis of the resident manager's unit in eligible basis will not be affected

by a later conversion of that apartment to a residential rental unit.

The term "residential rental unit" has a narrower meaning under section 42 of the Code than residential rental property. As noted above, under the legislative history of section 42, residential rental property includes facilities for use by the tenants and other facilities reasonably required by the project, as well as residential rental units. Under section 1.103-8(b)(4) of the regulations, units for resident managers or maintenance personnel are not classified as residential rental units, but rather as facilities reasonably required by a project that are functionally related and subordinate to residential rental units.

LP's resident manager's unit is properly considered a facility reasonably required by the project, not a residential rental unit for purposes of section 42 of the Code. Consequently, the unit is not included in either the numerator or denominator of the applicable fraction under section 42(c)(1)(B) for purposes of determining the qualified basis of the building for the first year of the credit period.

Therefore, as of the end of the first year of the credit period, the adjusted basis of the unit occupied by LP's resident manager is included in the building's eligible basis under section 42(d)(1) of the code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B). Because all of the residential rental units in LP's building are low-income units, the applicable fraction for the building is "one" (69/69, using the unit fraction).

If in a later year of the credit period, the resident manager's unit is converted to a residential rental unit, the unit will be included in the denominator of the applicable fraction for that year. If the unit also becomes a low-income unit in that year, the unit will be included in the numerator of the applicable fraction for that year. In this case, the applicable fraction will also be "one" (70/70, using the unit fraction).

HOLDING

The adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under section 42(d)(1) of the Code, but the unit is excluded from the applicable fraction under section 42(c)(1)(B) for purposes of determining the building's qualified basis.

EFFECTIVE DATE

The Internal Revenue Service will not apply this revenue ruling to any building placed in service prior to September 9, 1992, or to any building receiving an allocation of credit prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling. Similarly, the Service will not apply this revenue ruling to any building described in section 42(h)(4)(B) of the Code with respect to which bonds were issued prior to September 9, 1992, unless the owner files or has filed a return that is consistent with this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Paul F. Handleman of the Office of Assistant Chief counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Handleman on (202) 622-3040 (not a toll-free call).

Internal Revenue Service Revenue Procedure 94-65 (Documentation of Income from Assets)

Rev. Proc. 94-65

SECTION 1. PURPOSE

This revenue procedure informs housing credit agencies (Agency) and owners of qualified low-income housing projects (owners) when a signed, sworn statement by a low-income tenant will satisfy the documentation requirement of section 1.42-5(b)(1)(vii) of the Income Tax Regulations.

SECTION 2. BACKGROUND

Section 1.42-5 provides the minimum requirements that an Agency's compliance monitoring procedure must contain to satisfy its compliance monitoring duties under section 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42- 5(b)(1)(vii) provides that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. The term "low-income tenant" refers to the individuals occupying a rent-restricted unit in a qualified low-income housing project whose annual income satisfies the section 42(g)(1) income limitation elected by the owner of the project. Examples of the documentation required under section 1.42-5(b)(1)(vii) include a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation. A verification of income from a third party is referred to as a "third party verification."

The Internal Revenue Service has determined that an owner may satisfy the documentation requirement of section 1.42-5(b)(1)(vii) for a low-income tenant's income from assets by obtaining a signed, sworn statement from the tenant or prospective tenant if (1) the tenant's or prospective tenant's Net Family assets do not exceed $5,000, and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. See H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 544 (1993).

SECTION 3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects.

SECTION 4. PROCEDURE

.01 To determine a tenant's Net Family assets, owners and Agencies must use the definition of "Net Family assets" in 24 CFR 813.102, which provides definitions for the H.U.D. section 8 program.

.02 Except as provided in sections 4.03 and 4.04 of this revenue procedure, an Agency's monitoring procedure may provide that an owner may satisfy the documentation requirement for income from assets in section 1.42-5(b)(1)(vii) for a low-income tenant whose Net Family assets do not exceed $5,000 by annually obtaining a signed, sworn statement that includes the following:

(1) That the tenant's Net Family assets do not exceed $5,000, and

(2) The tenant's annual income from Net Family assets.

.03 An Agency's monitoring procedure, however, may not permit an owner to rely on a low-income tenant's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual income from assets to satisfy the documentation requirement in section 1.42- 5(b)(1)(vii).

.04 An Agency's monitoring procedure may continue to require that an owner obtain documentation, other than the statement described in section 4.02 of this revenue procedure, to support a low-income tenant's annual certification of income from assets.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective October 11, 1994.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey A. Erickson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Erickson at (202) 622-3040 (not a toll-free call).

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 42; 1.42-5.)

Rev. Proc. 2005-37

SECTION 1. PURPOSE

This revenue procedure establishes a safe harbor under which housing credit agencies and project owners may meet the requirements of § 42(h)(6)(B)(i) of the Internal Revenue Code as described in Q&A-5 of Rev. Rul. 2004-82, 2004-35 I.R.B. 350, concerning extended low-income housing commitments (commitments).

SECTION 2. BACKGROUND

Section 42(a) provides for a credit for investment in qualified low-income buildings (as defined in § 42(c)(2)). Under § 42(i)(3)(A), low-income units in a building must be occupied by individuals who meet the income limitation applicable under § 42(g)(1) to the project of which the building is a part. The building owner must elect under § 42(g)(1) to rent a percentage of the residential units to individuals whose income is 50 percent or less of area median gross income or 60 percent or less of area median gross income.

Section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless a commitment (as defined in § 42(h)(6)(B)) is in effect as of the end of the taxable year.

Section 42(h)(6)(B)(i) requires commitments to include the prohibitions against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) during the extended use period, that is, prohibitions against eviction or termination of tenancy of an existing tenant of any low-income unit (other than for good cause) and any increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42, applicable throughout the entire commitment period.

Section 42(h)(6)(B)(ii) provides that a commitment must allow individuals who meet the income limitation applicable to the building under § 42(g) (whether prospective, present, or former occupants of the building) the right to enforce in any state court the prohibitions of § 42(h)(6)(B)(i).

Section 42(h)(6)(J) provides that if, during a taxable year, there is a determination that a commitment was not in effect as of the beginning of the taxable year, the determination shall not apply to any period before the year and subparagraph (A) shall be applied without regard to the determination if the failure is corrected within 1 year from the date of determination.

Section 1.42-5(c)(1)(xi) of the Income Tax Regulations provides that a housing credit agency must require the owner of a low-income housing project to certify at least annually to the housing credit agency that, for the preceding 12-month period, a commitment as described in § 42(h)(6) was in effect (for buildings subject to § 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989, 1990-1 C.B. 210),

including the requirement under § 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f (for buildings subject to § 13142(b)(4) of the Omnibus Budget Reconciliation Act of 1993, 1993-3 C.B. 1).

On August 30, 2004, the Service ruled in Q&A-5 of Rev. Rul. 2004-82 that § 42(h)(6)(B)(i) requires commitments to include the prohibitions against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) during the extended use period, that is, prohibitions against eviction or termination of tenancy of an existing tenant of any low-income unit (other than for good cause) and any increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42, applicable throughout the entire commitment period. This requirement for commitments extends back to the effective date of § 42(h)(6)(B)(i). See § 11701(a)(7)(A) of the Omnibus Budget Reconciliation Act of 1990, 1991-2 C.B. 481, 531.

Q&A-5 provided that if it is determined by the end of a taxable year that a taxpayer's commitment does not meet the requirements for a commitment under § 42(h)(6)(B) (for example, it does not provide no-cause eviction protection for the tenants of low-income units throughout the extended use period), the low income housing credit is not allowable with respect to the building for the taxable year, or any prior taxable year. However, if the failure to have a valid commitment in effect is corrected within 1 year from the date of the determination, the determination will not apply to the current year of the credit period or any prior year.

Q&A-5 required each Agency to review its existing commitments by December 31, 2004, to ensure that the no-cause eviction protection and the prohibition against improper increases in gross rent apply throughout the extended use period. If during that review, an Agency determined that a commitment did not comply with these requirements, the 1-year period described under § 42(h)(6)(J) will commence on the date of that determination.

SECTION 3. SAFE HARBOR

.01 The Service has determined that Agencies may satisfy the review requirements under Q&A-5 for commitments entered into before January 1, 2006, under § 42(h)(6)(B)(i) in the following manner:

(1) Commitments entered into before January 1, 2006, that contain general language requiring building owners to comply with the requirements of § 42 (catch-all language) satisfy the requirements under Q&A-5, if:

(a) Agencies notify building owners in writing on or before December 31, 2005, that consistent with the interpretation in Q&A-5, the catch-all language prohibits the owner from evicting or terminating the tenancy of an existing tenant of any low-income unit (other than for good cause) throughout the entire commitment period. Further, Agencies must notify building owners that the catch-all language prohibits the owner from making an increase in the gross rent with respect to a low-income unit not otherwise permitted by § 42 throughout the entire commitment period;

(b) The owner must, as part of its certification under § 1.42-5(c)(1)(xi), certify annually that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants

had an increase in the gross rent with respect to a low-income unit not otherwise permitted under § 42;

(c) If the owner fails to make the certifications in (b) above or the Agency learns that the owner has evicted tenants in low-income units or terminated their tenancies other than for good cause or has increased the gross rent of a tenant with respect to a low-income unit not otherwise permitted under § 42, the Agency shall report the owner to the Internal Revenue Service using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition; and

(d) Section 3.02 shall also apply to any amendment to any commitment containing catch-all language if the amendment is executed after December 31, 2005.

(2) Commitments entered into before January 1, 2006, that do not contain specific language on the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) or catch-all language do not satisfy the requirements of Q&A-5 and must be amended to clearly provide for the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii) by December 31, 2005.

.02 The Service has determined that Agencies may satisfy the review requirements under Q&A-5 for commitments executed after December 31, 2005, under § 42(h)(6)(B)(i) in the following manner:

(1) Commitments executed after December 31, 2005, must clearly provide for the § 42(h)(6)(B)(i) prohibition against the actions described in subclauses (I) and (II) of § 42(h)(6)(E)(ii);

(2) The owner must, as part of its certifications under § 1.42-5(c)(1)(xi), certify annually that for the preceding 12-month period no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under § 42; and

(3) If the owner fails to make the certifications in (2) above or the Agency learns that the owner has evicted tenants in low-income units or terminated their tenancies other than for good cause or has increased the gross rent of a tenant with respect to a low-income unit not otherwise permitted under § 42, the Agency shall report the owner to the Internal Revenue Service using Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.

EFFECTIVE DATE

This revenue procedure is effective on June 21, 2005, the date this revenue procedure was released to the tax services.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jack Malgeri of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Malgeri on (202) 622-3040 (not a toll-free call).

Rev. Proc. 2004-38, 2004-27 I.R.B.

Part III

Administrative, Procedural, and Miscellaneous

22 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, ' 42; 1.42-5.)

Rev. Proc. 2004-38

SECTION 1. PURPOSE

This revenue procedure informs owners of qualified low-income housing projects how to obtain the waiver from the Internal Revenue Service of the annual recertification of tenant income (waiver) provided in ' 42(g)(8)(B) of the Internal Revenue Code.

SECTION 2. BACKGROUND

Section 1.42-5 of the Income Tax Regulations provides the minimum requirements that a housing credit agency's (Agency=s) compliance monitoring procedure must contain to satisfy its compliance monitoring duties under ' 42(m)(1)(B)(iii). Section 1.42-5(b)(1)(vi) provides that an Agency must require an owner to keep records for each qualified low-income building in the project that show for each year in the compliance period the annual income certifications of each low-income tenant per unit. Section 1.42-5(b)(1)(vii) provides

that an Agency must require an owner to keep documents for each qualified low-income building in its project for each year in the compliance period that support each low-income tenant's income certification. Section 1.42-5(c)(1)(iii) provides that an Agency must require an owner to certify at least annually that, for the preceding 12-month period, the owner has received an annual income certification from each low-income tenant and documentation supporting that certification.

Section 42(g)(8)(B) provides that on application by the taxpayer, the Secretary may waive any annual recertification of tenant income for purposes of ' 42(g) if the entire building is occupied by low-income tenants (a 100 percent low-income building). Low-income tenants are individuals occupying a rent-restricted unit in a qualified low-income housing project whose combined income satisfies the ' 42(g)(1) income limitation elected by the owner of the project.

SECTION 3. SCOPE

This revenue procedure applies to Agencies and owners of qualified low-income housing projects that consist entirely of 100 percent low-income buildings.

SECTION 4. PROCEDURE FOR OBTAINING A WAIVER UNDER ' 42(g)(8)(B)

An owner applying for the waiver for its 100 percent low-income building must (1) complete and sign the applicable portions of the Form 8877, Request for Waiver of Annual Recertification Requirement for the Low-Income Housing Credit, (2) have the Agency responsible for monitoring the building for compliance with § 42 sign the applicable portion of the form, and (3) file the form with the Service pursuant to the instructions accompanying the form. A copy of the 2004 version of Form 8877 is included in the

appendix to this revenue procedure. The Service will notify the owner whether the request for waiver has been approved or denied. See section 5.02 of this revenue procedure for the period the waiver is in effect.

SECTION 5. EFFECT OF OBTAINING A WAIVER UNDER ' 42(g)(8)(B)

.01 If an owner of a 100 percent low-income building obtains a waiver of the annual income recertification from the Service, the owner will be exempt from the recertification requirements of ' 1.42-5(b)(1)(vi) and (vii) and ' 1.42-5(c)(1)(iii). As a result, the owner is not required under those sections to (1) keep records that show an annual income recertification of all the low-income tenants in the building who have previously had their annual income verified, documented, and certified; (2) maintain documentation to support that recertification; or (3) certify to the Agency responsible for monitoring the building for compliance with ' 42 that it has received this information.

.02 The waiver takes effect on the date the Service approves the waiver. Once the waiver takes effect, it remains in effect until the end of the 15-year compliance period (defined in § 42(i)(1)), unless the waiver is revoked, in which case the waiver ceases to be in effect on the date of revocation. See sections 5.04 and 5.05 of this revenue procedure regarding revocations.

.03 Obtaining the waiver will not prevent an owner from having to produce documentation to verify the owner's compliance with ' 42 upon an examination of the owner's federal income tax return. Thus, for example, the owner must keep records and documentation that show the income of tenants upon initial occupancy of any residential unit in the building. In addition, except as provided in section 5.01 of this revenue

procedure, obtaining the waiver will not prevent an owner from having to satisfy the requirements of the compliance monitoring procedure adopted by the Agency responsible for monitoring the building for compliance with ' 42.

.04 The Service may revoke the waiver if the building ceases to be a 100 percent low-income building or if the Service determines that an owner has violated ' 42 in a manner that is sufficiently serious to warrant revocation. In any case, the Service will revoke the waiver if the Agency requests, in accordance with the instructions to Form 8877, that the Service revoke the waiver.

.05 A waiver will be automatically revoked if there is a change in the ownership for federal tax purposes of the 100 percent low-income building (including a change resulting from a termination of a partnership under ' 708). In this case, the owner that received the waiver must notify the Service of the revocation in accordance with the instructions to Form 8877. The new owner may apply for a waiver.

.06 An Agency's compliance monitoring procedure will not fail to satisfy ' 42(m)(1)(B)(iii) solely because the 100 percent low-income buildings to which the waiver applies have been exempted from the recertification requirements of ' 1.42-5(b)(1)(vi) and (vii) and ' 1.42-5(c)(1)(iii). Nonetheless, the Agency's compliance monitoring procedure must continue to require that an owner satisfy the requirements in ' 1.42-5(b)(1)(vi) and (vii) and '1.42-5(c)(1)(iii) upon a tenant's initial occupancy of any residential rental unit in the building.

.07 A 100 percent low-income building to which the waiver applies continues to be subject to the review requirements of ' 1.42-5(c)(2).

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 94-64, 1994-2 C.B. 797, is superseded. Waivers obtained under Rev. Proc. 94-64 are not affected by this revenue procedure.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for applications filed on or after July 6, 2004.

DRAFTING INFORMATION

The principal author of this revenue procedure is David Selig of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Selig at (202) 622-3040 (not a toll-free call).

APPENDIX

2004 Version of Form 8877